84-1681

No. _____

Office - Supreme Court, U.S.
FILED
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ALEXANDER L. STEVAS,
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

MASTER PRINTERS OF AMERICA,
Petitioner,

v.

RAYMOND J. DONOVAN,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

FRANCIS T. COLEMAN, JR.*
ELIZABETH L. LEWIS
BOOTHE, PRICHARD & DUDLEY
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 293-6900

Attorneys for Master Printers of America

*Counsel of Record

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QUESTIONS PRESENTED

1. Whether Section 203(b) of the Labor-Management Reporting and Disclosure Act (LMRDA) which requires burdensome disclosure from persons who, pursuant to an agreement with an employer, "persuade" employees as to the exercise of their organizational rights is unconstitutionally vague and violates the constitutional guarantees of free speech and due process when applied outside the context of an organizational campaign to regular publication of a magazine by an employer trade association.

2. Whether Section 203(b) of the LMRDA violates the right to freedom of association as articulated by this Court in *Federal Election Commission* v. *National Conservative Political Action Committee*, ____U.S.____, 105 S. Ct. 149 (1985), of an employer association and its members by compelling disclosure of confidential membership lists and financial data which will have a significant deterrent effect on the willingness of employers in the industry to join together to foster their common beliefs where such disclosure is not substantially related to a compelling governmental interest and its scope reaches far beyond the activity triggering disclosure to impinge on the interests of members who had no knowledge of and did not participate in the activity.

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OPINIONS BELOW

The decision of the United States Court of Appeals for the Fourth Circuit on December 26, 1984, is reported at 751 F.2d 700. The order of the United States Court of Appeals for the Fourth Circuit granting a stay of the reporting requirements dated February 1, 1985, is unreported. The decision of the United States Court of Appeals for the Fourth Circuit dated June 1, 1982, is unreported. The decision of the United States Court of Appeals for the Fourth Circuit dated April 14, 1980, is published at 105 LRRM 2995. The decision of the United States District Court for the Eastern District of Virginia dated October 4, 1982, is published at 112 LRRM 2504. The decision of the United States District Court for the Eastern District of Virginia dated July 24, 1980, is reported at 105 LRRM 2996. The decision of the United States District Court for the Eastern District of Virginia dated May 10, 1979, is unreported.

JURISDICTION

The United States Court of Appeals for the Fourth Circuit Circuit entered judgment in this case on December 26, 1984.

Jurisdiction to hear this case is conferred upon this Court by 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The First Amendment to the Constitution of the United States provides:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

The Fifth Amendment provides, in pertinent part:

> No person shall . . . be deprived of life, liberty, or property, without due process of law . . .

The following provisions are set forth in the Appendix:

National Labor Relations Act

Section 7, 29 U.S.C. § 157.

Labor Management Reporting and Disclosure Act

Section 202(e), 29 U.S.C. § 402(e)
Section 203(a) (4-5), 29 U.S.C. § 433(a)(4-5)

Section 203(b), 29 U.S.C. § 433(b)
Section 203(f), 29 U.S.C. § 433(f)

STATEMENT OF THE CASE

Master Printers of America is a national trade association serving approximately 5,000 nonunion or open shop commercial printing companies throughout the country. Its primary purpose is to provide labor relations advice and services to its members and to assist its members in building positive and progressive employee relations programs.

MPA provides many services and programs for its members, including lobbying efforts on behalf of the commercial printing industry, craft training programs, supervisor training workshops, and model employee relations manuals, which are financed by the dues and contributions received from each member.

Among its many programs, MPA has devised an employee recognition program called the Craftsmanship Program the purpose of which is to recognize and award employee excellence and foster good employee relations. Under this program, MPA member employers nominate individual employees to MPA for special recognition based upon experience, skills and abilities. Craftsmanship Programs are not coordinated with union organization drives and are not designed to have any relationship with union organizational activity. Nine hundred twenty-nine of the 5,000 members participated in the Craftsmanship Program in 1978.

As one of the benefits conferred by the Craftsmanship Program, certified craftsmen receive MPA's "Insight", a fourteen page quarterly magazine published by MPA primarily for open shop printing industry craftsmen and employees. It is sent to those employees whose addresses are provided to MPA by their employers. "Insight" bears the MPA

logo and is clearly identified as an MPA publication. "Insight" is also available to recipients of other awards on a subscription basis. Approximately 12,000 employees receive "Insight" by virtue of their participation in the Craftsmanship Program, and there are an additional 2,500 employees who receive subscriptions to the magazine out of a total of approximately 200,000 employees of MPA member companies.

Master Printers of America ("MPA") filed a complaint in the United States District Court for the Eastern District of Virginia, Alexandria Division, against the Secretary of Labor ("Secretary") on October 25, 1978, seeking a Declaratory Judgment that distribution of "Insight" magazine directly to employees was not persuader activity within the meaning of § 203(b) the Labor Management Reporting and Disclosure Act (LMRDA) 29 U.S.C. § 433(b)(1982) so that MPA would not be required to submit to the reporting requirements of the Act. On the same date, the Secretary filed a complaint against MPA seeking an order compelling MPA to file the reports in question. The complaints were thereafter consolidated for trial, and the parties filed cross-motions for summary judgment.

Following oral argument, the District Court awarded summary judgment to the Secretary on May 4, 1979, and ordered that MPA submit to the reporting requirements of 29 U.S.C. § 433(b)(1982). MPA appealed to the United States Court of Appeals for the Fourth Circuit, which held that summary judgment was inappropriate, and reversed and remanded for trial on the merits.

On remand, after a trial held on July 22, 1980, the District Court found that MPA had entered into an agreement or arrangement with its member employers pursuant to which MPA undertook to persuade its members' employees as to the exercise of their organizational rights. The Court found that certain articles in "Insight" magazine over

a five-year period constituted persuasion within the meaning of the Act. The Court declined to decide the constitutional issues involved, however, stating that they had already been decided by the Fourth Circuit's previous decision.

MPA again appealed to the Fourth Circuit, which affirmed in part, reversed in part, and remanded. The Court of Appeals affirmed the District Court's conclusion that "MPA had entered into a persuader agreement with the Craftsmanship Program's participating employers, which brought MPA under the terms of the Act's reporting requirements." However, the Court remanded for an initial determination and "further factual development" on the serious constitutional issues presented by this case which in the judgment of this Court included "freedom of association, vagueness, freedom of speech and prior restraint."

At trial on remand on September 22, 1982, John Doesburg, author of the regular "Insight" column "A View From All Over", stated that in writing the "Insight" articles in question, he believed that he was merely providing informational material about unions in a public forum and that he had no way of knowing either at that time or in the future whether or not such material would subsequently be found to be "persuader" in nature. Mr. Doesburg also stated that at no time in the course of writing the articles now under scrutiny was he attempting to persuade employees to take any particular course of action with respect to union representation, and that clearly none of his articles were written in the context of, or for use during union organizational campaigns. The term "persuade" as used in Section 203(b) is not defined either in the LMRDA or in the Department of Labor's Regulations. According to his own testimony, since the inception of this lawsuit, Mr. Doesburg has refrained from writing any articles which even so much as mentioned unions because of the uncertainty as to what might be

considered "persuasive" by the Labor Department or a reviewing Court. App. 69, 72.

At trial on remand MPA also presented considerable evidence demonstrating that forced disclosure of its members and their dues and contributions would have a substantial deterrent effect on continued MPA membership by numerous employers. The employees of several MPA member employers testified that they had received handouts from unions during organizing campaigns critical of MPA and the employer's membership in the association. Testimony further revealed that union leaders in recent years have depicted MPA as a "union busting organization" whose purposes somehow are unethical or illegal. MPA members, local association managers and officials testified that, as a result of this adverse publicity and similar union literature, current members would be deterred from participating in MPA programs if their membership and/or contributions were made public, and that potential members would be reluctant to join for these same reasons.

MPA members also testified that the publication of their dues payments could serve to divulge cost ratios, employment profiles, and other confidential information which could undermine their competitive positions within the industry, thus adding another disincentive to continuing their membership in the Association should reporting be required.

All of the foregoing evidence was unrebutted by the Secretary who introduced no evidence bearing on any of the Constitutional issues. Following the hearing, the District Court held that the reporting requirements of § 203(b) of the LMRDA, 29 U.S.C. § 433(b) were constitutional both facially and as applied to MPA.

MPA again appealed to the Fourth Circuit which affirmed the District Court by opinion dated December 26, 1984.

REASONS FOR GRANTING THE WRIT

I. THE DECISION OF THE COURT BELOW IS DIRECTLY IN CONFLICT WITH THE DECISIONS OF THIS COURT HOLDING THAT IT IS CONSTITUTIONALLY INTOLERABLE FOR A VAGUE STATUTE TO INDUCE PERSONS TO FOREGO THEIR RIGHTS TO FREE SPEECH FOR FEAR OF VIOLATING AN UNCLEAR LAW.

A. This Case Involves An Unprecedented Extension Of The Persuader Reporting Provisions Of The Labor Management Reporting And Disclosure Act To Apply To Regular Publication Of A Labor Relations Magazine.

This case involves an unprecedented extension of the coverage of Section 203(b) of the Labor Management Reporting and Disclosure Act (LMRDA) in two new directions. This statute applies, by its terms, to a person who "pursuant to any agreement with an employer" undertakes, directly or indirectly, to "persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain." The legislative history, a portion of which is included in the Appendix, demonstrates that this statute was enacted to protect employees from the "hidden", "surreptitious" activities of "union busting middlemen" who spent "large sums of money" to interfere "with the right of employees to join or not to join a labor organization".

The Fourth Circuit decision applying the statute to regular publication of a magazine unrelated to specific organizational campaigns expands both the type of speech and the context of that speech beyond the congressional focus on communications to employees during the course of a particular organizational campaign. Extension of Section 203(b) in this manner requires an illogical distortion of the language of the statute and its operation and runs roughshod

over the Constitutional rights to free speech and free assembly of the Master Printers of America and its members. The Fourth Circuit opinion pays lip service to the constitutional requirements, but its analysis belies any serious application of those principles to the underlying facts.

B. The Court Below Misapplied This Court's Standards Delineating The Exacting Scrutiny Applied To Legislation Which Deters Free Expression.

The Fourth Circuit opinion states that "a finding of substantial 'chill' on protected first amendment rights requires a showing that the statutory scheme will result in threats, harassment, or reprisals to specific individuals," citing *Buckley* v. *Valeo*, 424 U.S. 1, 74 (1976), and *NAACP* v. *Alabama*, 357 U.S. 449, 462 (1958). This standard is incorrectly stated, and in any event, applies only to freedom of association cases and not to freedom of speech, where proof of a chilling effect must relate to expression.

Any legislation which deters free expression must be subjected to the most exacting scrutiny under the First Amendment. The standards delineating the permissible boundaries of specificity where First Amendment rights are involved are strictly construed and interpreted. There is no presumption of constitutionality where the statutory line drawn between permitted and prohibited conduct is ambiguous. Ambiguities must be resolved in favor of protection of First Amendment rights. *NAACP* v. *Button*, 371 U.S. 415 (1963).

The LMRDA's reporting requirements do not provide discernable standards for distinguishing between reportable and non-reportable speech. Neither the language of the LMRDA itself nor the legislative history puts a reasonable person on notice that regular publication of a trade association magazine is covered by the Act. The Act gives no guidance as to what magazine articles might be considered

activity with a purpose to persuade employees in the exercise of their rights to organize and bargain collectively. Application of the statute in this context has a continuing chilling effect on the right of free expression of MPA and its members because MPA has been forced to refrain from publishing any article on the activities of labor unions to avoid the reporting requirement. App. 111.

In *Thomas* v. *Collins*, 323 U.S. 516 (1945); this Court emphasized the importance of free speech in a labor relations context:

> Free discussion concerning the conditions in industry and the causes of labor disputes appears to us indispensable . . . The right thus to discuss, and inform people concerning, the advantages and disadvantages of unions and joining them is protected not only as part of free speech, but as part of free assembly.

323 U.S. at 532.

The LMRDA suffers from the absence of definitions for such terms as "persuade" or "advise", so that neither MPA nor its members can be certain what "Insight" articles may require disclosure. Nor has the Secretary provided a definition of "persuasion" in any published regulations. The overbroad construction approved by the Fourth Circuit compounds this defect by applying the disclosure requirements to employers on the basis of informational articles in a general interest magazine having no relation to any particular employer's labor relations situation. The authors of MPA's articles were reasonably entitled to believe that they could state their opinions and provide facts about labor issues as long as they did not seek to move any particular company's employees to vote for or against a union. The language of the statute itself, its legislative history and prior Court interpretations all support this interpretation.

C. The Decision Of The Court Below Is Directly In Conflict With Thomas v. Collins, 323 U.S. 516 (1945), And Other Decisions Of This Court Which Hold That Vague Terms Which Limit Speech Are Constitutionally Intolerable.

The Fourth Circuit's decision is in conflict with decisions of this Court, in particular *Thomas* v. *Collins*, 323 U.S. 516 (1945). In *Thomas*, the Supreme Court invalidated a Texas statute requiring any paid labor union organizer to file a written request for an organizer's card before soliciting members for his organization. Rejecting the position taken by the state of Texas, that a layman could easily distinguish between general advocacy and solicitation, the Supreme Court stated:

> No speaker, in such circumstances, safely could assume that anything he might say upon the general subject would not be understood by some as an invitation... [T]he vice is not merely that invitation, in the circumstances shown here, is speech. It is also that its prohibition forbids or restrains discussion which is not or may not be invitation. The sharp line cannot be drawn surely or securely.

323 U.S. at 535.

Far from being "an ordinary term that... we can all understand", as the Fourth Circuit Court concluded, the word "persuade" is no different from the words "solicit" or "invite" found to be vague and ambiguous by this Court in *Thomas*. Each is a "general word" creating "different and often particular impressions on different minds." 323 U.S. at 534.

The Fourth Circuit opinion attempts to distinguish *Thomas* v. *Collins* from the instant case in two ways. First it

claims that "persuade" is a far more precise term than "solicit". Recognizing that in *Thomas* the term solicit had many plausible meanings some of which overlapped with protected speech and that this Court was concerned that it would have been impossible for the speaker to give a speech advocating the union's cause without implying an invitation to join the union, the Fourth Circuit nevertheless concluded that "persuade" was a more precise term because of the context in which it occurs, *i.e.* pursuant to an agreement with an employer, on the subject of bargaining rights and addressed to employees. This language no more defines the word "persuade" than the language in *Thomas* limiting the context of "solicit" to "any members for his organization" provided any definition of "solicit" itself. On the contrary, it is hard to conceive how one might write a factual article unfavorable to unions without its having a persuasive effect on some hearers. The district court's finding demonstrate the range of meanings and interpretations of this word "persuade" by dividing the articles it considered persuasive into three categories: "directly persuasive", "indirectly persuasive", and "unambiguously anti-union". This leaves the individual to speculate that the next categories would be "ambiguously anti-union" and "unpersuasive" articles which, presumably, would be protected speech, but provides no guidance as to how to distinguish between protected and proscribed conduct. In this regard, the instant case is indistinguishable from *Thomas*.

The Fourth Circuit also attempts to distinguish *Thomas* on the grounds that the consequence of triggering the statute was to enjoin all speech whereas the consequence of triggering the statute in this case is mere disclosure. This is simply not the case. In *Thomas*, the statute merely required the speaker to obtain a registration card prior to speaking, it did not directly prohibit speech. Even if it had done so, this distinction is without import, for this Court has stated repeatedly that first amendment freedoms

are protected not only against "heavy-handed frontal attack" but also from "being stifled by more subtle government interference." *Gibson* v. *Florida Legislative Investigation Committee*, 372 U.S. 539 (1963).

Similarly, in *Buckley* v. *Valeo*, 424 U.S. 1 (1976), this Court, citing *Thomas* v. *Collins*, held that the Federal Election Campaign Act's required disclosure of expenditures for purposes of "advocacy" raised serious vagueness problems since "the distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application." 424 U.S. at 42. This Court's solution, without which it would have struck down the provision entirely, was to strictly limit the word "advocate" solely to those expenditures for campaign materials expressly using the words "vote for" or "elect" in reference to a particular candidate in a particular campaign. Id. at n.52. *See also*, *United States* v. *Harriss*, 347 U.S. 612 (1954), where this Court held that a lobbying disclosure law could be sustained only by limiting the meaning of "lobbying" to direct communication with members of Congress on behalf of specific, pending legislation. *Id.* at 620.

Like the pre-registration requirement in *Thomas* v. *Collins*, the District Court's interpretation of Section 203(b) requires MPA and its members to determine in advance of any publication of "Insight" whether or not to make burdensome financial disclosures unrelated in time to the publication of "Insight" and without first knowing whether or not the Secretary of Labor or a Court will at later consider portions of the magazine to be persuasive. Under this interpretation, MPA and its members can be assured they will not violate the statute only by complying with the reporting requirements even when "Insight" turns out to be totally innocuous. Thus, the LMRDA as applied to MPA operates as a prior restraint on free speech which cannot be sustained.

This interpretation also demonstrates how absurd the statute becomes when applied outside the context of an organizational campaign. It requires an employer to recognize that he has entered into a "persuader agreement" by virtue of nominating an employee for an honorary recognition program. This, in turn, is based on the future contents of a magazine the existence of which may not be known to the employer.

The uniform treatment by this Court of disclosure laws dependent on general words like "solicitation", "invitation", "advocacy", and "lobbying" leaves no doubt as to the serious constitutional harm caused by broad application of the word "persuasion" in the LMRDA. MPA has urged, consistent with *Buckley* v. *Valeo*, *supra*, that the constitutional confrontation be avoided by limiting the definition of persuasion to activities directed towards a particular company's employees or to a specific union organizing campaign. This limited definition is consistent with the statutory language in which the object of the verb "persuade" is "employees exercising their rights under the law." Those rights are defined in Section 7 of the National Labor Relations Act as the right to "join, support or assist a labor organization." Such have been the circumstances of all previous "persuader" cases.[1]

Absent clear guidance as to the limits of meaning of the term persuade, there has been and will continue to be a significant chilling effect on MPA's free speech regarding

[1] In *Douglas* v. *Wirtz*, 353 F.2d 30 (4th Cir. 1965), *cert. denied*, 383 U.S. 909 (1966); *Wirtz* v. *Fowler*, 372 F.2d 315 (5th Cir. 1966); *Price* v. *Wirtz*, 412 F.2d 647 (5th Cir. 1969); and *Humphreys, Hutcheson & Moseley* v. *Donovan*, No. 83-5564, *Humphreys, Hutcheson & Moseley* v. *Donovan*, no. 83-5564 (6th Cir. Feb. 20, 1985), no effort was made to define "persuasion" because the defendant attorneys in those cases conceded that they had sought to persuade employees of particular employers in the midst of a union organizing campaigns. *See also*, *Master Printers Association* v. *Donovan*, 699 F.2d 370 (7th Cir. 1983), *cert. denied*, 464 U.S. 1040 (1984).

the activities of labor unions. There was uncontroverted testimony at trial that MPA has already been forced to engage in self-censorship since the filing of this lawsuit, and has refrained from publishing articles which deal in any way with labor unions because of the uncertainty surrounding the meaning of "persuasion". This uncertainty as to what will and will not trigger the reporting requirements under the LMRDA has caused MPA not to write articles that would undoubtedly have fallen within the area of protected speech. Reasonable exactitude in the use of statutory language is critical where, as in the instant case, vagueness of necessity compels a voluntary trade association to forego its First Amendment rights for fear of violating a law which would require its members to surrender the right to privacy in their associational endeavors.

In *Scull* v. *Virginia*, 359 U.S. 344 (1959), this Court enunciated the principle that vagueness which induces individuals to forego their rights of speech and association for fear of violating an unclear law is constitutionally intolerable. This Court reversed Scull's conviction for contempt for failure to answer questions put to him by a Virginia legislative committee on the ground that the committee never made clear to Scull the pertinence of the inquiry to a legitimate state interest. Similarly, MPA has a right to know with certainty what activities will trigger the Section 203(b) reporting requirements.

In summary, the provisions of § 203(b) of the LMRDA are unconstitutionally vague because they provide no guidance as to what constitutes "persuasion". The District Court's overboard interpretation of the statute, extending it outside the scope of an organizational campaign to a regularly published magazine goes far beyond what is necessary to protect any legitimate governmental interest. The chilling effect on free speech has been immediate and significant.

II. THE DISCLOSURE OBLIGATION IMPOSED BY THE DECISION OF THE COURT BELOW IS IN DIRECT CONFLICT WITH *FEDERAL ELECTION COMMISSION* v. *NATIONAL CONSERVATIVE POLITICAL ACTION COMMITEE* AND OTHER DECISIONS OF THIS COURT PROTECTING THE PRIVACY OF GROUP ASSOCIATION WHICH IS INDISPENSABLE TO PRESERVATION OF FREEDOM OF ASSOCIATION.

A. This Court Has Repeatedly Held That Disclosure Laws are Unconstitutional Unless They Are Substantially Related to a Compelling Government Interest and are Narrowly Drawn So as to Avoid Infringing on First Amendment Rights.

This Court has repeatedly struck down disclosure laws like the LMRDA when they have operated to discourage free association. The Court has recognized that the primary effect of such laws is to induce members to withdraw from the association and to dissuade others from joining for fear of exposure of their beliefs. Accordingly, this Court struck down a disclosure law in *NAACP* v. *Alabama*, 357 U.S. 449 (1958), stating as follows:

> Inviolability of privacy in group associations may in many circumstances be indispensable to preservation of freedom of association, particularly where a group espouses dissident beliefs.

357 U.S. at 462.

This Court and the Circuit Courts have reaffirmed the principles of *NAACP* v. *Alabama* on many occasions, finding that compelled disclosure of organizational ties did function as an unconstitutional restraint upon the right to freedom of association under a variety of factual circumstances. This Court has recognized that the public opprobrium, reprisals,

and threats of reprisals that accompany disclosure of group affiliations can serve as a substantial deterrent to engaging in such affiliations. *Bates* v. *Little Rock*, 361 U.S. 516 (1960); *Shelton* v. *Tucker*, 364 U.S. 479 (1960); *Louisiana ex rel Gremillion* v. *NAACP*, 366 U.S. 293 (1961); *Gibson* v. *Florida Legislative Investigation Committee*, 372 U.S. 539 (1963); *NAACP* v. *Button*, 371 U.S. 415 (1963); *Familias Unidas* v. *Briscoe*, 619 F.2d 391 (5th Cir. 1980).

B. The Court Below Incorrectly Interpreted And Misapplied This Court's Evidentiary Standards For Showing That Compelled Disclosure Inhibits Free Association.

In this case, the Fourth Circuit improperly interpreted the evidentiary standards established by this Court for showing that compelled disclosure functions as an unconstitutional restraint on free association. The Fourth Circuit required a showing that "the statutory scheme will result in threats, harassment, or reprisals to specific individuals." This standard is incorrect in three major respects. First, this Court has stated that since it is practically impossible to show with certainty that disclosure will act as a disincentive to participation in the organization before such disclosure actually occurs, a litigant must show only a "reasonable probability" that compelled disclosure will have a deterrent effect on the willingness of members to participate in the organization. *Buckley* v. *Valeo*, 424 U.S. 1, 74 (1976).

Second, the Fourth Circuit limits the type of hostility which a litigant may demonstrate to "threats, harassment or reprisals." This Court has recognized that there may be other forms of public opprobrium manifested against members of an organization, such as "economic reprisal" and "other manifestations of public hostility." *NAACP* v. *Alabama*, 357 U.S. 449, 462 (1958).

Finally, this Court does not require that there be reprisals against "specific individuals", as the Fourth Circuit required. Rather, this Court has stated that "proof may include, for example, specific evidence of past or present harassment of *members* due to their associational ties, or of harassment directed against *the organization itself*." *Buckley* v. *Valeo*, 424 U.S. 1, 74 (1976). Thus, reprisals against MPA's employer members and against MPA itself are proper evidence of infringement of freedom of association.

The Fourth Circuit dismissed out of hand MPA's strong evidence of reprisals against the organization and its members. Evidence was presented by representatives of several companies all of which: 1) were members of MPA, 2) did not participate in the Craftsmanship Program and did not have employees who had received "Insight" magazine, and 3) had both union and non-union printing plants. (App. 1 -29). These representatives indicated that their companies consider membership in MPA, their dues, and their contributions to MPA's voluntary action program all to be highly confidential information. Where unions have discovered and publicized this information without permission, the companies have discontinued all contributions to the voluntary action program and have considered withdrawing completely from MPA.

The evidence established that disclosure of such information makes MPA members easy targets for union organizational drives. Organizational drives are very expensive, disruptive and are one method used by unions to harass employers. The Graphic Arts Union has repeatedly expressed its hostility towards MPA and towards printing employers who participate in MPA programs. MPA has been made the focus of several union organizing campaigns, as evidenced by the union handouts from three separate elections which were placed in evidence (App. 101 - 109). These handouts castigate MPA as a "union buster" and a law violator, and excoriate each company for contributing funds

to the association. Not having actual figures available, the unions have nevertheless attempted to estimate employer dues in order to turn employees against their employers for "misappropriating" funds. These handouts vividly demonstrate how the unions will use the extensive confidential information sought by the Secretary to the detriment of MPA's members.

Further, the evidence established that disclosure of the confidential membership and dues information would enable printing industry competitors to gain unfair advantage over MPA members by creating a company employment profile and cost analysis that they would not otherwise be able to compile. Disclosure would also cause harassment by groups peddling industrial training programs and by insurance agents and other unwanted solicitors.

The essence of the First Amendment right is to protect those who, for whatever reason, wish to speak through the medium of association. The form of organization of a group does not diminish its entitlement to First Amendment protection. *Federal Election Commission* v. *National Conservative Political Action Committee*, ____U.S.____, 105 S.Ct. 149 (1985). Unless the purposes of the organization are illegal, this Court has stated it is not for a court to determine whether the desire for privacy is reasonable. A court must be satisfied only that the desire for privacy is real, and that disclosure would likely deter association. The testimony at trial clearly demonstrates that employers who join MPA merely to support the association's legislative efforts, its industrial relations research, its lawful advice in employee relations matters, and many other activities, will be deterred from doing so because of the application of the Secretary's disclosure requirements.

The Fourth Circuit characterized MPA's evidence as "speculation about a potential decline in membership" instead of being based on "documentation of MPA's recent

membership statistics." This characterization is improper, since MPA produced evidence of actual withdrawal from programs in the past and consideration of complete withdrawal in the future. Reliance on "membership statistics" is also inconsistence with the Fourth Circuit's own requirement that the litigant show reprisals "against specific individuals". Finally, it ignores the fact that MPA has chosen to refrain from free speech in order to protect the right of its members to freely associate. No one has withdrawn from the association for two compelling reasons. First, the disclosure requirement has been stayed pending this lawsuit and second, MPA has refrained from *any* comment on the subject of unions in order to avoid the issue of disclosure. (App. 8, 8N2).

The Fourth Circuit bases its conclusion on the assertion that "knowledgeable persons in the industry already know which shops are unionized and which are not." The record is devoid of any evidence to this effect and, even assuming it were true, the issue is whether an employer is a member of MPA, not whether it is unionized. The opinion also states that it is unlikely competitors could derive useful information from knowing the amount of dues an employer pays to MPA. This statement is without evidentiary foundation and ignores the record evidence that dues are directly related to the gross receipts of a company. (App. 9).

Finally, the Court's statement that the affiliation of employers who participate in the Craftsmanship Program is already known to their employees ignores the fact that less than 2,000 of the 5,000 members of MPA participate in this program. It is inescapable that the only basis for the Fourth Circuit's refusal to take seriously MPA's evidence that disclosure will force a decline in membership is that Court's obvious belief that the First Amendment rights of MPA and its members are somehow not worthy of protection.

C. The Decision Of The Court Below Cannot Be Reconciled With the Decisions of This Court Carefully Circumscribing Governmental Infringment Of The Right To Associate In Private.

This Court has established three tests which a disclosure law must pass to be upheld as constitutional. First, the underlying government interest must rise to the level of a legitimate and compelling government interest. *Buckley* v. *Valeo*, 424 U.S. 1, 64-68 (1976); *Gibson* v. *Florida Legislative Investigation Committee*, 372 U.S. 539 (1963). Second, the information sought must be shown to be "substantially related" to the compelling government interest. *Gibson* v. *Florida Legislative Investigation Committee*, 372 U.S. 539 (1963); *NAACP* v. *Button*, 371 U.S. 415 (1963). Third, even when substantially related to a compelling government interest a statute will survive strict scrutiny only if narrowly drawn to avoid imposing on First Amendment rights more than is absolutely necessary. *Buckley* v. *Valeo*, 424 U.S. 1 (1976); *NAACP* v. *Alabama*, 377 U.S. 288 (1964).

The legislative history of the LMRDA, demonstrates that Congress's "interest" when it enacted the law was in deterring the activities of "union busting middlemen" during union organizing drives whose covert activities interfered with the collective bargaining process. This governmental interest in discouraging corruption in labor relations does not rise to the level of a compelling federal interest sufficient to justify infringement of individual First Amendment rights. It is not enough that the government's interest is legitimate and its motive sincere. The only government interest thus far recognized by this Court as so compelling as to justify infringing freedom of association is the government's interest in self-preservation, the ultimate value of any society.

In *Uphaus* v. *Wyman*, 360 U.S. 72 (1959), *reh. denied*, 361 U.S. 856 (1959), *appeal denied*, 364 U.S. 388 (1959), the

Supreme Court found this interest at stake, and compelled disclosure of the membership of a "camp" thought to be a communist front organization. This Court was careful to point out that the individual rights in associational privacy were tenuous at best since many of the guests has signed a register at the beginning of the camp which they knew to be open to inspection by sheriffs and police officers. Similarly, in *Konigsberg* v. *State Bar of California*, 366 U.S. 36, *reh. denied*, 368 U.S. 869 (1960), the State Bar Association's inquiry into communist party membership in a certification hearing was allowed because of the government interest in self-preservation.

However, in *NAACP* v. *Alabama*, 357 U.S. 449 (1958), the Supreme Court held that no compelling governmental interest existed. The Court held that Alabama's interest in obtaining NAACP membership lists solely for purpose of determining whether the NAACP was conducting intrastate business in violation of a state statute was not a compelling governmental interest. It therefore held that compelling disclosure of NAACP membership lists would violate the freedom of association of the NAACP and its members.

In this case, as in *NAACP* v. *Alabama*, the federal interest involved is not a compelling governmental interest. Although the government does have a legitimate interest in eliminating corruption from labor relations, this interest does not rise to the level of protecting and safeguarding the very framework of society as it did in both *Uphaus* and *Konigsberg*. Under the circumstances of this case, the fundamental right to free association guaranteed by the First Amendment must take precedence.

Even if it is assumed that the interest of the government which underlies the LMRDA is sufficiently compelling

that it outweighs the protection of First Amendment freedoms, there is no substantial relationship between requiring disclosure of MPA's entire membership and their financial relationship to MPA and this government interest.

In *Gibson* v. *Florida Legislative Investigative Committee*, 372 U.S. 539 (1963), this Court found that no substantial relation existed between the legitimate government interest in investigation of subversive activities and compelled disclosure of the membership lists of a local branch of the NAACP. The State Legislative Committee failed to show any connection between the NAACP, a wholly legitimate association, and subversive activities or between the NAACP and the Communist Party; thus, the membership list was held protected from disclosure. "The strong associational interest in maintaining privacy of membership lists of groups engaged in the constitutionally protected free trade in ideas and beliefs may not be substantially infringed upon such a slender showing as here made by the respondent." 372 U.S. at 555.

Similarly, in this case, there is no reasonable correlation between the purpose the LMRDA seeks to achieve and disclosure of the entire membership list and financial structure of MPA. The purpose of the reporting requirement is to publicize and thereby discourage and prevent the corrupt practices of union busting middlemen, and to apprise employees of the identity of persons who seek to influence their votes in an organizing campaign.

In this case, the identity of MPA is not an issue. It is not a middleman, nor an unidentified third party but an employer organization, clearly identified as such. No employee could mistake it for a neutral third party. "Insight" is clearly identified as an MPA publication. All craftsmen who are honored by the Craftsmanship Program are well aware of the nature and purpose of MPA. This knowledge of the identity and character of MPA, standing

alone, is sufficient to fulfill the Congressional goals of identifying for employees any person who might seek to influence their votes in an organizational campaign.

The definition of "employer" in the LMRDA itself clearly contemplates the identity of interest between an employer and an employer association. 29 U.S.C. § 402(e) provides that "Employer" means "any employer or any group or association of employers." Despite the fact that the identity of an "association of employers" with the employers themselves is recognized by the LMRDA itself, the Secretary in this case is demanding disclosure of the entire MPA membership and the dues relationship between each association member and MPA, contending that such superfluous publicity is permissible as added protection against corruption. This "added protection" is clearly unnecessary, and falls far short of demonstrating the substantial relationship to a compelling government interest required to justify an extensive intrusion into the freedom of association of MPA and its members.

In *Citizens Against Rent Control/Coalition for Fair Housing* v. *City of Berkeley*, 454 U.S. 290 (1981), a case involving an ordinance which limited political contributions, this Court stated unequivocally that superfluous government-imposed burdens are impermissible where First Amendment freedoms are seriously threatened. The Supreme Court struck down the Berkeley ordinance on the grounds that it violated the rights of speech and association by placing a limitation on contributions which could be made to committees formed to support or oppose various ballot measures. The Court rejected the city's argument that the ordinance was necessary as a prophylactic measure to identify supporters and opponents of ballot measures. The Court noted that sufficient identification of sources of support was possible without the challenged provisions. The fact that application of the law hinged on whether the

contribution was made by an individual or a group was fatal to the ordinance. The court stated that:

> To place a spartan limit—or indeed any limit—on individuals wishing to band together to advance their views on a ballot measure, while placing none on individuals acting alone, is clearly a restraint on the right of association. [The ordinance] does not seek to unite the voice of one individual and it cannot be allowed to hobble the collective expressions of a group.

454 U.S. at 296.

In the recent case of *Federal Election Commission* v. *National Conservative Political Action Committee*, __U.S.__, 105 S.Ct. 149 (1985), this Court reaffirmed the principal that First Amendment protection does not depend on whether speech is undertaken by individuals or collectively. In this case, as is *Federal Election Committee* v. *National Conservative Political Action Committee*, the application of the statute hinges on whether employers act as individuals or through their trade association. In a sequel to this case, *Donovan* v. *MPA*, 108 LRRM 2050 (E.D. Va. 1981), the District Court held that requiring reporting where the employer distributes literature prepared by MPA and clearly identified as MPA literature is impermissible because "the chilling effect of such reporting . . . has serious First Amendment implications if the Act is interpreted to include the activities at issue here." *Id.* at 2051.

The Court stated that, where the individual employer distributes the publication, "no covert activity is involved" and that "[a]n employee is aware that he or she is receiving management's point of view, buttressed by an article which might as well be from the Wall Street Journal, obtained by the employer pursuant to an agreement with that newspaper." *Id.* at 2051.

It defies logic to believe that these serious First Amendment questions evaporate when the employer provides employee addresses to MPA and MPA distributes "Insight" directly to employees. Although concededly it is often necessary to draw distinctions between permissible and impermissible conduct, drawing a distinction on the basis of whether an employer acts individually or through his trade association obviates any claim that there is a substantial relationship between the espoused governmental purpose of § 203(b) and the reporting requirement at issue.

In short, the lack of rational relationship between the reporting and disclosure sought by the Secretary, in the instant case, and the Congressional purpose of § 203(b) is highlighted by the fact that publications clearly designed to influence employees' exercise of their rights under Section 7 of the National Labor Relations Act have, on the one hand, been held to be nonreportable activity, while distribution of a general interest magazine, having no relationship with the exercise of employees' Section 7 rights, has been held by the same court to trigger reporting and disclosure obligations.

In this case, because MPA is clearly identified, compelled disclosure of the finances of MPA's members, which adds little to the identity of an employer trade association and which clearly invades the right to free and private association of the individual members is constitutionally intolerable.

Where the right to freedom of association is at stake, any requirement limiting that freedom must be highly selective in order to survive a First Amendment challenge. *Louisiana ex rel Gremillion* v. *NAACP*, 366 U.S. 293 (1961). Even if the governmental purpose is both legitimate and substantial, it cannot be pursued by means that broadly stifle fundamental personal liberties when that objective can be more narrowly achieved. Id. The least restrictive

means for achieving the same basic purpose must be used. *Shelton* v. *Tucker*, 364 U.S. 479 (1960).

The unlimited and indiscriminate sweep of § 203(b) of the LMRDA is far too heavy handed a manner in which to meet the limited purpose espoused by the government. In *Louisiana ex rel Gremillion, supra*, a State statute requiring the NAACP to file a list of the names and addresses of all its members and officers within the State was held invalid. The Supreme Court held that the statute could have been more narrowly drawn and still could have prevented the supposed evil (communist infiltration into organizations) it was attempting to regulate. *See also, Shelton* v. *Tucker*, 364 U.S. 479 (1960), in which the Supreme Court invalidated a statute which required broader disclosure of a teacher's associations then was required to effectuate the state's purpose. *Compare National Gay Task Force* v. *Board of Education of the City of Oklahoma City*, 729 FF. *24.1270*, (10th Cir. 1984) *affirmed by an equally divided courty* ___ U.S. ___ 53 U.S.L.W. 4408 (March 6, 1985).

The application of § 203(b) in this case is far too broad. Instead of limiting this disclosure demand to those members of MPA who have actually read "Insight" magazine, or to participants in the Craftsmanship Program, or in any other rational manner reasonably related to the alleged persuader conduct, the Secretary has sought and the courts have ordered complete disclosure of *all* of MPA's receipts and disbursements from its entire membership. The overbroad nature of this approach is made evident by the fact that although over 5,000 employers could be affected by the financial disclosure order, there were only 900 companies participating in the Craftsmanship Program at the time for which disclosure is sought. Similarly, whereas 200,000 employees are employed by MPA members, only 12,000 receive "Insight" magazine. The District Court's remedy in no sense conforms to the actual alleged scope of MPA's *de*

minimis activities and must be deemed unconstitutional as a result. *Compare Federal Election Committee* v. *National Conservative Political Action Committee*, _U.S._, 105 S.Ct. 149 (1985) where this Court stated: "We are not quibbling over fine-tuning of prophylactic limitations, but are concerned about wholesale restriction of clearly protected conduct."

See also Familias Unidas v. *Briscoe*, 619 F.2d 391 (5th Cir. 1980) which involved a similarly overbroad Texas statute which sought financial disclosures from any organization which engaged in activities designed to "hinder, harass, or interfere with" peaceful operation of the public schools. Recognizing a compelling state interest in maintaining peaceful schools, the Fifth Circuit nevertheless found that the disclosure law, at least when applied to associations, infringed upon First Amendment rights. The Fifth Circuit criticized the statute for failing to "take stock of the individual members against whom it operates," adding:

> [T]he mere presence of an individual's name on an organization's membership rolls is insufficient to impute to him the organization's illegal goals . . . Oblivious to this principle, [the statute] subjects to the public recrimination certain to follow from public disclosure, members who not only may not have participated in, but who may not have approved or even been aware of, their organization's involvement in the disruptive activities that triggered the disclosure provision. With respect to these people, disclosure bears no relation at all to the state interest in deterring school disruptions: One cannot . . . be dissuaded from supporting that of which he is unaware.

619 F.2d at 401.

For the same reasons, the disclosure sought by the Secretary in the present case cannot be permitted. The Secretary is seeking to apply the statute against members of MPA who are not members of the Craftsmanship Program. The evidence also shows many employers who participate in the Craftsmanship Program are still not aware of the existence of "Insight" magazine. In this case, as in *Familias Unidas*, the disclosure requirements of § 203(b) infringe upon the right of association of MPA and its members by hinging disclosure of membership in MPA on activities of the association of which various members were unaware, in which they did not participate, of which they may not have approved, and over which they had no control. Under the Secretary's expansive interpretation, association members could avoid the risk of disclosure only by withdrawing from the association altogether, since they could not be assured whether activities arranged by other association members might trigger the reporting requirement. The Constitution does not permit such a result.

The practical effect of the trial court's ruling in this case is that MPA and other employer associations will face a choice. Either they will refrain from any comment on union activity in any context, no matter how far it is removed from an actual organizing drive, in order to protect the privacy of their members; or, they will exercise their right to fair comment on the subject of union activity and suffer a debilitating decline in membership, thus losing their freedom to associate. Whichever choice is made, a vital First Amendment right will be compromised. By contrast, if this Court refuses to extend the LMRDA in this untoward manner, no substantial government interest will be affected. Employees have no difficulty identifying MPA as an employer organization and understand that "Insight" magazine is written from the employer's perspective. We urge this Court to protect the Constitutional freedoms at stake in this action.

CONCLUSION

For the foregoing reasons, a writ of certiorari should be issued to review the judgment of the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,

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*Francis Thomas Coleman, Jr.**
Elizabeth L. Lewis
BOOTHE, PRICHARD & DUDLEY
2000 Pennsylvania Avenue, N.W.
Suite 8350
Washington, D.C. 20016
(202) 293-6900

*Counsel of Record

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United States Court of Appeals

For the Fourth Circuit

No. 82-1990

MASTER PRINTERS OF AMERICA,

Appellant,

versus

RAYMOND J. DONOVAN, SECRETARY OF LABOR

Appellee,

THE CENTER ON NATIONAL LABOR POLICY, INC.

Amicus Curiae/A

CHAMBER OF COMMERCE OF THE UNITED STATES,

Amicus Curiae/A

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Albert V. Bryan, Jr., District Judge. (C/A 78-720 & 78-721)

Argued February 28, 1984. Decided December 26, 1984

Before RUSSELL and ERVIN, Circuit Judges, and BUTZNER, Senior Circuit Judge.

Francis T. Coleman (Elizabeth L. Lewis, Boothe, Prichard & Dudley on brief) for Appellant; Michael Ernest Avakian (Jeanette P. Papillo, The Center on National Labor Policy, Inc. on brief) for Amicus Curiae in support of appellant; Allen H. Feldman (Francis X. Lilly, Deputy Solicitor of Labor, Karen I. Ward, Associate Solicitor for Special Appellate and Supreme Court Litigation, Charles I. Haden, Counsel for Appellate Litigation, Elaine D. Kaplan, Dept. of Labor on brief) for Appellee; (Cynthia Wicker, Stephen A. Bokat, National Chamber Litigation Center, Inc. on brief) for Amicus Curiae the Chamber of Commerc of the United States.

ERVIN, *Circuit Judge:*

Master Printers of America (MPA)(Association) is a national trade association that serves approximately 5,000 nonunion commercial printing companies around the country. In 1978 MPA filed suit in federal district court challenging the authority of the Secretary of Labor to require the Association to file reports under Section 203(b) of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 433(b) (1976) (LMRDA) (the Act) (the Statute). The Secretary responded by seeking an injunction to compel compliance. The suits were consolidated in the form of cross motions for summary judgment and the lower court granted the Secretary's motion. On appeal this court reversed, concluding that an unresolved factual dispute existed over whether MPA's activities fell within the scope of § 203(b). Following a trial, the district court ruled on remand that MPA's activities were covered by the Act.

MPA appeals for a second time, arguing that the district court's findings were erroneous and that § 203(b) was unconstitutional because it violated MPA's first amendment rights. We affirmed the lower court's factual findings, but remanded for an initial determination of the constitutional questions. On remand for the second time, the district court concluded that § 203(b) was constitutional. MPA now appeals that decision. We affirm.

I.

MPA's membership consists of approximately 5,000 employers who employ about 200,000 employees. Local associations recruit new members, who then become automatically affiliated with MPA, and arrange for participation in various MPA programs. One such project is MPA's Craftmanship Program, initiated in 1950 to recognize and reward employee excellence through awards of Craftsmanship certificates to experienced workers nominated by their employers and positively evaluated by an expert panel. Roughly one-fifth of the MPA membership (900 employers) participates in this program; there are currently about 12,000 certified Craftsmen.

Craftsmen receive a permanent free subscription to the MPA-edited magazine, "Insight," a quarterly some 14-16 pages in length featuring items of general interest to the printing industry. "Insight" goes directly to employees' homes, at addresses furnished by their employers. In a pamphlet for employers entitled "How MPA Serves You," the subjects of "insight" are said to encompass "technological improvements . . ., trends of products or processes, profit facts, advantages of the open shop, human-interest stories, awards events, and similar articles." Among its other publications MPA produces some documents, distributed to employers and employees, with strong anti-union focus.

Section 203(b) of the Act requires any person who enters an agreement with an employer to engage in union or open shop "persuader activity" to disclose the arrangement by filing appropriate forms with the Secretary of Labor. [1]

[1] Section 203(b) of the Labor-Management Reporting and Disclosure Act states in full that:

> Every person who pursuant to any agreement with an employer undertakes activities where an object thereof is, directly or indirectly — (1) to persuade employees to
>
> *(footnote continued on following page)*

When we remanded this case for the first time, the district court concluded that MPA and the employer-participants in the Craftsmanship Program had entered into a persuader agreement that subjected MPA to the reporting requirements of the Act. The court found that the persuader articles appearing in "Insight" were "unabashedly anti-union," and rejected as incredible "the employers asserted lack of awareness and lack of concern about the content of a publication which they know goes directly to their employees' homes at the employer's direction."

(footnote continued from preceding page)

> exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing; or (2) to supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding; shall file within thirty days after entering into such agreement or arrangment a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing the name under which such person is engaged in doing business and the address of its principal office, and a detailed statement of the terms and conditions of such agreement or arrangement. Every such person shall file annually, with respect to each fiscal year during which payments were made as a result of such an agreement or arrangement, a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing a statement (A) of its receipts of any kind from employers on account of labor relations advice or services, designating the sources thereof, and (B) of its disbursements of any kind, in connection with such services and the purposes thereof. In each such case such information shall be set forth in such categories as the Secretary may prescribe.

On the second appeal MPA did not limit its challenge to the validity of these findings. Rather, the association charged that the statutory reference to persuader activity in the Act was unconstitutionally vague; the registration requirement amounted to content-based prior restraint; the disclosure requirements infringed MPA's freedom of association; and Section 203(b) had been improperly applied to the Association's pure speech. Following our decision to remand for a second time MPA refined its constitutional claims and presented new evidence to support those claims.

The Association presented essentially three arguments to the district court. First, it contended that the Act infringed its first amendment rights of speech and association by creating "a substantial deterrent effect on continued MPA membership by numerous employers." MPA offered evidence that in recent years union leaders had depicted the trade association as a "union busting organization." Forced disclosure of membership and contribution lists, MPA contended, would deter current members from participating in MPA programs, jeopardize efforts to recruit additional members, and thereby unconstitutionally burden its speech activity. Second, MPA argued that the Statute was void for vagueness. An "Insight" columnist, Mr. Doesburg, testified that since the outset of the lawsuit he had avoided writing any articles dealing with labor-management disputes because he could not determine what constituted "persuasion" under § 203(b). In MPA's view, therefore, the Act violated its due process rights because it failed "to provide explicit standards" for those applying the disclosure provisions. *Grayned v. City of Rockford*, 408 U.S. 104, 109 (1972), *quoting Speiser v. Randall*, 357 U.S. 513, 526 (1958). Moreover, the ambiguity of the statutory language, according to MPA, had a chilling effect on the Association's freedom of speech, insofar as it forced "Insight" to "steer far wider of the unlawful zone . . . than if the boundaries of the forbidden areas were clearly marked." *Id.* Third and finally, MPA

argued that the reporting requirements of § 203(b) constituted a prior restraint on free speech because they required compliance "prior to publication, regardless of the timing or actual contents of the magazine."

After reviewing the evidence the district court concluded that MPA had failed to establish a violation of its first amendment rights. The court found that the Act was sufficiently precise to serve notice of its requirements and that any "chilling effect" suffered by Doesburg and MPA was "more an admission that he [and "Insight"] is unable to write an article that is merely informative . . . without at the same time taking a position in which he undertakes to persuade his readers." The court viewed with "skepticism" the claim advanced by MPA's witnesses that disclosure would have a "deterrent effect" on membership, but it concluded that even if the disclosure requirements did encroach on MPA's first amendment rights of speech or association, the governmental interests served by the Act far outweighed the harm suffered.

The court rejected out of hand MPA's prior restraint argument.

II.

The Supreme Court has recognized that "compelled disclosure of affiliation with groups engaged in advocacy" may infringe first amendment rights. *Buckley v. Valeo*, 424 U.S. 1, 65-65 (1976); *Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539 (1963); *NAACP v. Alabama*, 357 U.S. 449 (1958). *See also Marshall v. Stevens People & Friends, for Freedom*, 669 F.2d 171, 176 (1981), *cert. denied*, 455 U.S. 940 (1982). Disclosure laws that "significant[ly] encroach" on first amendment rights "cannot be justified by a mere showing of some legitimate governmental interest." *Buckley*, 424 U.S. at 65-65. Rather, the states interests must survive "exacting" scrutiny, and the state must establish a

"relevant correlation" or "substantial relation" between the governmental interest and the information sought through disclosure. *Id.* Exacting scrutiny is required even if the infringement on first amendment rights arises "not through direct government action, but indirectly as an unintended but inevitable result of the government's conduct in requiring disclosure." *Id.*

To assess the Association's first claim that the LMRDA's disclosure requirements violate the first amendment rights of speech and association, therefore, our analysis must focus on four factors: the degree of infringement on first amendment rights; the importance of the governmental interest protected by the Act; whether a "substantial relation" exists between the governmental interest and the information required to be disclosed; and the closeness of the "fit" between the Act and the governmental interest it purports to further. After weighing these factors, it will be possible to determine whether the burden imposed on MPA's freedoms of speech and association — if such a burden exists—is sufficiently justified by the interests the Act seeks to protect.

A finding of a substantial "chill" on protected first amendment rights requires a showing that the statutory scheme will result in threats, harassment, or reprisals to specific individuals. *Buckley*, 424 U.S. at 74; *NAACP*, at 357 U.S. at 462-63 (1958). In *NAACP v. Alabama*, for example, the Court refused to grant the state's request for disclosure of an NAACP membership list because the NAACP had made an "uncontroverted showing that on past occasions revelation of the identity of its rank and file members has exposed these members to economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility." Given this record the Court concluded that compelled disclosure was likely to "affect adversely the ability of petitioner [NAACP] and its members to . . . foster their beliefs . . in that it may induce members to withdraw

from the Association . . . or dissuade others from joining." 357 U.S. at 462-63. Similarly, in *Buckley* the court refused to hold that disclosure provisions of the Federal Election Campaign Act, 2 U.S.C. § 431 (1976), violated first amendment rights of minor parties and independent candidates because "no appellant in this case has tendered record evidence of the sort proffered in *[NAACP v.] Alabama*" 424 U.S. at 71.[2] Although the Court stated that "the evidence offered need show only a reasonable probability that the compelled disclosure of a party's contributors' names will subject them to threats, harassment, or reprisals," the Court also made clear that "[w]here it exists the type of chill and harassment identified in [*NAACP v.] Alabama* can be shown." *Id.* at 74.

We do not believe that the evidence and allegations of first amendment infringement here constitute the sort of threat of physical harm and loss of employment found in *NAACP v. Alabama* and its progency. MPA offered testimony indicating that disclosure would enable printing industry competitors to gain unfair advantage over MPA members and would "cause the added annoyance of harassment" by unwanted solicitors, but this evidence was entirely speculative. MPA also offered testimony that where membership has been publicized, employers have discontinued their contributions to MPA's voluntary action program and "have considered withdrawing completely from MPA." This testimony, however, was not based on a careful documentation of MPA's recent membership statistics, but rather rested on a casual reference by MPA's general counsel:

[2] MPA relies heavily on *Familias Unidas v. Briscoe*, 619 F.2d 391 (5th Cir. 1980), as an example of a disclosure law that was found to infringe on associational rights because of the chilling effect that disclosure would have on petitioner organization's membership. Yet, like *NAACP*, the court found specific record evidence of reprisals by both private citizens and public officials against members of the organization. *Id.* at 395-96, 399. The court was not content to rely on mere speculation about a potential decline in membership.

Q: In your opinion would the disclosure of those contributions, voluntary contributions, by individual MPA members to that have any effect on the continuation of those contributions?

A: It already has. We have several cases in which the unions have come out and publicized to certain employees in an organization campaign amounts which were given to the Voluntary Action Program or paid into MPA, and as a result they were exaggerated. The company answered those results—answered those accusations, but discontinued any further payment in the Voluntary Action Program.

The skepticism with which we view this evidence of encroachment on MPA's first amendment rights is supported by several facts pointed out by the district court. First, knowledgeable persons in the industry already know which shops are unionized and which are not. Second, it is unlikely that competitors could derive useful information from knowing the amount of dues an employer pays to MPA. Finally, MPA itself concedes that the affiliation of employers who participate in the Craftsmanship Program is already known to their employees. Thus it is difficult to take seriously MPA's fears that disclosure will force a decline in membership. [3]

[3] Our review of the findings made by the district court, of course, is subject to the clearly erroneous standard of Fed. R. Civ. P. 52(a). Even were we to disagree with the district court's ultimate conclusion about the alleged "deterrent effect" of the disclosure provisions, we do not believe that the record offers sufficient evidence of actual harm to permit reversal under Rule 52.

We conclude, therefore, that § 203(b)'s disclosure and reporting requirements do not substantially burden MPA's rights of speech and association. Although we do not foreclose the possibility that on different facts the Act might create a substantial chill on a given organization's first amendment rights, we do not believe that MPA has established the type of record evidence[4] of encroachment required to establish a "deterrent effect" under *Buckley* and *NAACP v. Alabama*.

B.

Our conclusion that the district court did not clearly err in finding that MPA failed to establish a substantial burden on its first amendment rights is not the end of the inquiry. The allegations of chill here, while they are not substantial, are also not entirely inconsequential. A serious claim of infringement has been made. To survive the "exacting scrutiny" required by the Supreme Court, therefore, the government must show that the disclosure and reporting requirements are justified by a compelling government interest, and that the legislation is narrowly tailored to serve that interest.[5] It is to these considerations that we now turn.

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[4] MPA stresses *Familias Unidas v. Briscoe*, 619 F.2d 391 (5th Cir. 1980) to support its claim of infringement on speech activity. In our view *Familias Unidas* is wholly distinguishable from this case. There the district court found specific record evidence of reprisals against members of the plaintiff organization by private citizens and public officials. As discussed *supra*, our case does not involve this type of evidence. *Compare NAACP v. Alabama*, 357 U.S. 449 (1958); *Buckley v. Valeo*, 424 U.S. 1, 64-65 (1976) *with Federal Election Comm'n v. Hall-Tyner Election Campaign Comm.*, 678 F.2d 416 (2d Cir. 1982), cert. denied, 103 S.Ct. 785 (1983) (record evidence of harassment); *Brown v. Socialist Workers '74 Campaign Comm., 103 S.Ct. 416 (1982) (record evidence of reprisals).*

[5] *See Buckley, 424 U.S. at 64-66; Marshall v. Stevens People & Friends for Freedom*, 663 F.2d 171, 178 (1981); *Donovan v. Master Printers Ass'n*, 532 F. Supp. 1140, 1148 n.11, (N.D. Ill. 1981), *aff'd*, 699 F.2d 370 (7th Cir. 1983), *cert. denied*, 104 S.Ct. 703 (1984).

i.

The Supreme Court has "acknowledged that there are governmental interests sufficiently important to outweigh the possibility of infringement, particularly when the 'free functioning of our national institutions' is involved." *Buckley*, 424 U.S. at 66, *quoting Communist Party v. Subversive Activities Control Board*, 367 U.S. 1, 97 (1961). Among the interests recognized by the Court as compelling are the "deterrence of actual corruption," 424 U.S. at 67, and "the government's power to inform itself through investigations 'in order to act and protect its legitimate and vital interests.' " *Marshall*, 663 F.2d at 178 *quoting Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539, 544 (1963).

The legislative history and purpose behind the enactment of the LMRDA has been exhaustively reviewed by this Court in *Marshall v. Stevens People & Friends, for Freedom*, 669 F.2d 171 (1981), and by the Seventh Circuit in *Donovan*, 699 F.2d 370 (affirming and adopting the opinion of the district court, 532 F. Supp. 1140 (N.D. Ill.) (1983). In *Marshall* we noted that the need for compelled disclosure under the Act grew out of Congressional findings that "union busting" management middlemen were working with employers to undermine employee efforts to exercise their § 7 rights. [6] The Senate committee conducting the investigation concluded that

[6] "Section 7 rights" refers to the right to unionize granted to all workers under Section 7 of the National Labor Relations Act, 29 U.S.C. § 157 (1976).

The LMRDA, as opposed to the NLRA, was the product of lengthy investigations into organized labor conducted by the McClellan Committee. Like its predecessors, the Kennedy-Ives Bill, S. 3974, 85th Cong., 2d Sess. (1958), the Kennedy-Ervin Bill, S. 505, 86th Cong., 2d Sess. (1959), and S. 1555, 86th Cong. 1st Sess. (1959) (written by Senator John F.

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> [F]rom recent investigations in the labor and management fields [we conclude] that there have been a number of instances of breach of trust, corruption, disregard of the rights of individual employees, and other failures to observe high standards of responsibility and ethical conduct which require further and supplementary legislation that will afford necessary protection of the rights and interests of employees and the public generally as they relate to the activities of labor organizations, employers, labor relations consultants, and their officers and representatives.
>
> [T]he enactment of this chapter [§ 203(b)] is necessary to eliminate or prevent improper practices on the part of labor organizations, employers, labor relations consultants, and their officers and representatives which distort and defeat the the policies of the Labor Management Relations Act . . .

29 U.S.C. §§ 401(b), 401(c) (declaration of findings, purposes, and policy).

Recognizing the corruption and bribery that these middlemen had been involved in, [7] and recognizing as well that the "persuader business" boded ill for an area of law that

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Kennedy), the LMRDA focused on the manner in which "middlemen" were used by management to limit employee efforts to unionize. *See Donovan*, 532 F. Supp. at 1150.

[7] The extent of the wrongdoing uncovered by the Senate Committee was vividly documented in one excerpt from its report:

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was already "pervasively regulated" to prevent return to the "economic warfare of the nineteenth century," *Donovan*, 532 F. Supp. at 1148; *Price*, 412 F.2d at 650, the Senate Committee recommended a comprehensive disclosure law:

> The committee believes that employers should be required to report their arrangements with these unionbusting middlemen. Further, the Committee on Labor and Public Welfare has received evidence in prior hearings showing that large sums of money are spent in organized campaigns on behalf of some employers for the purpose of interfering with the right of employees to join or not to join a labor organization of their choice, a right guaranteed by the National Labor Relations Act. Sometimes these expenditures are hidden behind committees or fronts; however the expenditures are made, they are usually surreptitious because of the unethical content of the message itself . . .

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The committee notes that in almost every instance of corruption in the labor management field there have been direct or indirect management involvements. The report of the McClellan committee describes management middlemen flitting about the country on behalf of employers to defeat attempts at labor organization. In some cases they work directly on employees or through committees to discourage legitimate organizational drives or set up company-dominated unions. These middlemen have been known to negotiate sweetheart contracts. They have been involved in bribery and corruption as well as unfair labor practices. The middlemen have acted, in fact if not in law, as agents of management. Nevertheless, an attorney for the National Labor Relations Board has testified before the McClellan committee that the present law is not adequate to deal with such activities.

Senate Committee on Labor and Public Welfare, S. Rep. No. 86-187, 86th Cong., 1st Sess. (1959), *reprinted in* [1959] U.S. Code Cong. & Admin. News 2318-2327.

> Similarly, expenditures have been made in the past by employers surreptitiously and through labor spies, to obtain information about employees and unions. This type of activity certainly is not conducive to sound and harmonious labor relations.

Senate Committee on Labor and Public Welfare, S. Rep. No. 86-187, 86th Cong., 1st Sess. (1959), *reprinted in* [1959] U.S. Code Cong. & Admin. News 2318, 2326-2327. The committee reasoned that even if all of the activity engaged in by management middlemen was not illegal, compelled disclosure would have a much needed remedial effect:

> All of the activities required to be reported by this section are not illegal nor are they unfair labor practices. However, since most of them are disruptive of harmonious labor relations and fall into a gray area, the committee believes that if an employer or a consultant indulges in them, they should be reported.

S. Rep. at 2328.

It is clear from the Act's legislative history, therefore, that § 203 was enacted for the purpose of serving the twin "compelling" governmental interests of deterring actual corruption and bolstering its own ability to investigate "in order to act and protect." *Gibson*, 372 U.S. at 544.[8] Thus, if in fact MPA has suffered a minimal infringement on its first

[8] Justice Stewart has recognized a third "compelling" governmental interest where first amendment rights have been challenged in the labor relations context. In *Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1975), Justice Stewart stated in his concurring opinion that limits on employer speech that might violate the first amendment in a purely political setting are permissible in a labor setting because of the government's interest in maintaining "antiseptic conditions in the labor relations context." 425 U.S. at 778-79.

amendment rights, that infringement is the consequence of government efforts to protect legitimate and important societal interests.

ii

The governmental interests identified by Congress and enacted by the Secretary are unquestionably "substantially related" to the disclosure scheme embodied in § 203. As a general matter, the Supreme Court has recognized that disclosure is an effective means of countering actual corruption and the appearance of corruption:

> Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light is the most efficient policeman.

Buckley, 424 U.S. at 67, *quoting* L. Brandeis, *Other People's Money* 72 (1933). The disclosure requirements of § 203 provide much needed "sunlight" in several ways. First, disclosure helps employees, "like voters in an election," to understand the source of the information that is distributed. *Donovan*, 532 F. Supp. at 1150. This type of exposure discourages potential abuse and dramatically reduces the appearance of impropriety in an area where there has been a demonstrated propensity for wrongdoing. Second, as the district court in *Donovan* noted, the LMRDA scheme ensures that the Secretary has the means to gather data and detect violations:

> The annual report serves as a cross-check on the accuracy of the 30 day reports and serves to notify the Secretary of relationships between a persuader and employer which may give rise to a duty to file a 30 day report.

Donovan, 532 F. Supp. at 1150.

iii.

MPA insists that even if compelling government interests exist that are substantially related to the information required to be disclosed, the Act is not carefully tailored to achieve its purpose. According to MPA, employees who receive "Insight" know it is an MPA publication and appreciate the nature of MPA. Nothing is gained, therefore, by requiring the additional burden of comprehensive financial disclosure. In addition, MPA points out that although over 5,000 employers could be affected by § 203, only 900 companies were actually participating in the Craftsmanship Program at the time disclosure in this case was sought.

We find these arguments unpersuasive. In enacting the LMRDA, Congress foresaw that only extensive, detailed exposure of covert management activities would limit abuses by middlemen. Reviewing the purposes behind the LMRDA in *Wirtz v. Fowler*, 372 F.2d 315 (1966), the Fifth Circuit made this point effectively:

> "This exposure [e.g. disclosure] was to include not only the fact that the consultant was paid by management, but why he was paid, how much he was paid, and the practices he engaged in to earn his pay. The aim was disclosure, but the method almost uniformly adopted to attain the end was reporting of these details, not the mere verbal acknowledgement by the consultant that he was hired by management as a persuader, fact few employees would be too insensitive to grasp."

Wirtz, 372 F.2d at 325.[9] It is difficult to imagine how the Act could be effective if it required only disclosure of identity and not disclosure of financial information. Full financial disclosure, in our view, therefore, is not overkill; to the contrary, it is absolutely essential if the purposes behind the Act are to be fulfilled.

Similarly, we find little significance in the fact that the number of employers potentially affected by the disclosure requirement exceeded the number of companies enrolled in the Craftsmanship Program at the time compliance was sought. Congress believed management persuaders as a group were inherently suspect. In order to deter both actual corruption and the appearance of corruption, Congress concluded that it would be necessary to require the disclosure of a wide-ranging number of employers and activities, even if it meant reporting activities that were not improper.

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[9] The Senate Report submitted with an earlier version of the LMRDA—the Kennedy-Ives Bill—stated that the danger of corruption posed by union-busting middlemen was so great that even expenditures made in the open should be disclosed in the same manner as all union financial disbursements:

> "The committee believes that employers should be required to report their arrangements with these union-busting middlemen.
>
> ....
>
> [L]arge sums of money are spent in organized campaigns on behalf of some employers for the purpose of influencing and affecting employees in the exercise of their rights.
>
> ....
>
> Sometimes these expenditures are hidden behind committees or fronts. *Sometimes they are made in the open.* In any event... they should be exposed to the light of publicity *in the same fashion* that all union financial disbursements will be exposed."

S. Rep. No. 1684, 85th Cong., 2d Sess. 7-8 (1958) (emphasis added).

S. Rep. 187, 86th Cong., 1st Sess. at 10, *reprinted in* [1959] U.S. Code & Admin. News 2318, 2328 (1959). Clearly, those who participate in the Craftsmanship Program may be more likely to have conspired with MPA to persuade than those only tangentially involved in the "persuader business," but that is not a reason to restrict arbitrarily the scope of the disclosure "spotlight." Indeed, if anything, the need for wide-ranging disclosure may be even more critical in the labor context because of the difficulty of distinguishing between persuader and nonpersuader activities. *See Price v. Wirtz*, 412 F.2d 647, 650 (5th Cir. 1969). [10]

In contrast to the position taken by MPA, we are impressed by the precision with which § 203(b) has been tailored to serve its purpose. The annual report, which deals with the less sensitive area of labor relations advice or services, does not require full disclosure of MPA's financial structure or of the content of the advice rendered. Only those receipts and disbursements specifically related to labor relations advice or services need be reported. Nor does § 203(b) require MPA do designate which employers named in the annual report are members and which are not. In the suspect area of actual persuasion, however, the Statute employs the 30 day report to ensure a more detailed and immediate disclosure. With each type of report the Statute requires only the information necessary to inform employees and the Secretary of the consultant's labor relations activities. In this way an individual or organization need

[10] In *Wirtz* the Fifth Circuit noted that:

> The legislative judgment that one who engages in the persuader business must be subjected to the pressure of revealing publicity is amply justified by the difficulty in distinguishing between those activities that are persuader activities and those that are not, and by the opportunity for misleading concealment of the true nature of such [persuader's] work in situations involving intricate corporate conglomerate associates or, equally pressing, industry wide labor controversies.

412 F.2d at 650.

provide no more than is absolutely necessary to further the twin goals of deterring corruption and permitting the government to "inform itself through investigations 'in order to act and protect its legitimate and vital interests.'" *Marshall*, 669 F.2d at 178, *quoting Gibson v. Florida Legislative Investigation Committee*, 372 U.S. 539, 544 (1963).

Our conclusion that § 203(b) is not overbroad is strongly supported by *Buckley*, for as the district court in *Donovan* pointed out, the LMRDA's disclosure scheme is "remarkably similar" to parts of the Federal Election Campaign Act that were held constitutional by the *Buckley* Court. Both statutes recognize that although most persuader activity or campaign contributions have no corrupting influence on labor relations or the political process respectively, rigorous and comprehensive reporting and record keeping requirements are necessary to combat the appearance of corruption. Thus both statutes impose a variety of requirements on virtually all types of campaign contributions and persuader activity respectively.

Likewise, both statutory schemes implicitly recognize that if voters in an election or employees in a labor setting are to have some knowledge of where the information in a political or union election comes from, and if agencies charged with enforcement are to possess the means to detect violations of the FECA and LMRDA respectively, comprehensive disclosure requirements are essential. Thus both schemes require complete disclosure in the belief that "goldfish-bowl publicity", 412 F.2d at 650, will aid the government in "curbing the evils of [public] ignorance and corruption." 424 U.S. at 68.[11]

[11] If, as the *Buckley* Court found, detection of violations is important in the campaign finance context, it is even more important in the labor area where employers may find it easy to use persuaders to commit unfair labor practices that will undercut the employees' right to choose union

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Finally, it is important to note that courts have been loathe to hold disclosure requirements overbroad with the same degree of frequency reserved for other laws that seek to restrict particular types of speech. Disclosure laws perform the important function of deterring actual corruption and avoiding the appearance of corruption, but unlike other types of restrictive laws they actually promote speech by making more information available to the public and thereby bolstering the "marketplace of ideas." *See First National Bank of Boston v. Bellotti*, 435 U.S. 765, 791-92 at n.2 (1978); *Kani v. Forman*, 702 F.2d 475 (4th Cir. 1983).[12]

III.

We now turn to MPA's second major contention that § 203(b) is impermissibly vague.

Vague laws may be found unconstitutional either because they violate basic principles of due process or because they impermissibly limit free speech. Due process may be offended in one of two ways:

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representatives. A close look at the disclosure scheme upheld in *Buckley*, then, might justify an even more comprehensive disclosure law in the labor area than the LMRDA presently offers.

[12] To support its overbreadth argument, MPA cites *Familias Unidas v. Briscoe*, 619 F.2d 391 (5th Cir. 1980), as an example of a disclosure statute, allegedly similar to this one, that was found to infringe impermissibly on protected first amendment activity. We have already noted some of the differences between this case and *Familias Unidas*. See note 4 *supra*. To those considerations we add the observation that unlike the state statute in *Familias Unidas*, § 203(b) does not make membership in an organization grounds for disclosure. Rather it hinges disclosure on the existence of a relationship involving the supplying of labor relations advice between a persuader and an employer. Insofar as the purpose of § 203(b) is to focus public attention on all labor relations activities of persuaders, the reporting and disclosure provisions at issue here are more carefully tailored to the purposes of the underlying statute than those involved in *Familias Unidas*.

> First, because we assume that man is free to steer between lawful and unlawful conduct, we insist that laws give the person of ordinary intelligence a reasonable opportunity to know what is prohibited, so that he may act accordingly. Vague laws may trap the innocent by not providing fair warning. Second, if arbitrary and discriminatory enforcement is to be prevented, laws must provide explicit standards for those who apply them. A vague law impermissibly delegates basic policy matters to policemen, judges, and juries for resolution on an ad hoc and subjective basis, with the attendant dangers of arbitrary and discriminatory application.

Grayned v. City of Rockford, 408 U.S. 104, 109 (1972) (footnotes omitted). Free speech, in turn, may be offended if the uncertainty of the meaning of the statute causes a citizen to "steer far wider of the unlawful zone . . . than if the boundaries of the forbidden areas were clearly marked." *Grayned*, 408 U.S. at 109, *quoting Speiser v. Randall*, 357 U.S. at 372 (1958).

Here MPA argues that the vagueness of the term "persuade", as used in § 203(b), violates both its due process and first amendment rights. According to MPA, the statute does not make clear whether § 203(b) requires disclosure only if the merits of a particular union organizing campaign are discussed in an "Insight" article which is sent to employees involved in that particular campaign, or if disclosure is also required should "Insight" authors undertake to write about an organizing dispute in nonspecific terms. In MPA's view, the ambiguity of the statute violates due process because it is impossible for the Association to anticipate whether the distribution of "Insight" to employer members will be reportable. This "vagueness" also violates the Association's

first amendment rights because, as MPA puts it, "Insight" writers have been forced to "steer far wider of the unlawful zone" than if the applicability of the statute had been clearly defined. MPA insists that the ambiguity has caused "Insight" writers to engaged in "self-censorship" or "refrain [entirely] from publishing articles which deal in any way with unions" even though some of the planned articles "would undoubtedly have fallen within the area of protected speech." 408 U.S. at 109.

We are not convinced that § 203(b), as written, is impermissibly vague. A statute is not vague if "it conveys sufficiently definite warning as to the proscribed conduct when measured by common understanding and practices." *United States v. Petrillo*, 332 U.S. 1, 8 (1977). The term "persuade" meets this standard. As the district court found, "persuade is a common every day word—easily capable of being understood. Webster's New Collegiate Dictionary defines persuade as meaning "to move by argument, entreaty, or expostulation to a belief, position, or course of action." We find nothing ambiguous or confusing about this definition. Indeed, in *Douglas v. Wirtz*, 353 F.2d 30 (4th Cir. 1965), *cert denied*, 383 U.S. 909 (1966), we noted that the term "persuade" is commonly—and properly—used in many situations where reports are required by law. *Wirtz*, 353 F.2d at 33-34. *See generally NLRB v. Gissel Packing*, 395 U.S. 575, 620 (1969) (not unconstitutional or unreasonable to require an employer to distinguish among types of persuasive speech).

The context in which the term is placed in the Statute is equally clear. Persuasion will trigger disclosure if it is made "pursuant to any agreement or arrangement with an employer"; if it is aimed at an employee; and if the subject of the persuasion is the exercise of an employee's right to organize or bargain collectively. By the plain terms of the Statute "persuasion" can potentially be communicated through publication of an article discussing organizing on a

theoretical level, or an article discussing the specifics of a particular organizing campaign. What matters is not the precise union dispute that is discussed, but rather whether the article is distributed pursuant to an agreement with an employer, and whether it is published with the *intention* to persuade employees about the merits of union organizing and collective bargaining.

MPA was well aware that it had entered into specific agreements with various employers to distribute "Insight" magazine. We find preposterous the suggestion made by MPA that its relationship to the employer-employee recipients of "Insight" is no different than that enjoyed by the *Wall Street Journal*, *Readers Digest*, and *U.S. News and World Report*. Clearly the Association remains on notice that any articles designed to "persuade" employees one way or the other about open-shop arrangements will trigger disclosure, regardless of whether the persuader activity involves specific or theoretical organizing efforts, and regardless of whether the particular shop that received the material is the subject of the persuader material.[13]

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[13] The district court made this point somewhat differently, but in our opinion, no less accurately when it took the position that as long as an agreement with a specific employer exists, persuader activity should be considered directed at the recipient employees even if the subject of the writing is a general anti-union discussion. In the district court's view, § 203(b) does not need the further limiting construction sought by MPA, for it is already specific enough in its application to specific employees:

> MPA argues under *Buckley* that the definition of "persuade" should be limited "to activities directed towards a particular company's employer or to a specific union organizing campaign." Under § 203(b), however, the term "persuade" is used only in connection with one who has entered into an "agreement" with an employer. Admittedly, "Insight" acts to "persuade" employees of the member employer under § 203(b) by publishing anti-union articles perhaps having another employer or union, or

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When MPA's vagueness argument is stripped to its essentials, it becomes nothing more than an admission that, in the words of the district court, "insights'" authors are "unable to write an article that is merely informative . . . as to conditions and technical advances in the industry, without at the same time taking a position in which [they] undertak[e] to persuade [their] readers." Given MPA's track as an "unabashedly anti-union" trade association, we find it rather disingenuous for it to argue seriously that it is unable to distinguish speech designed to persuade from speech that is merely informational. As the district court so aptly put it:

> It may well be that an article containing [MPA's] point of view, written in a persuasive manner or factual information in the context of supporting that point of view, is more interesting than pure uneditorialized facts. But that [MPA's inability to distinguish the two] is not a problem of constitutional dimension.[14]

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labor-management relations in general, as its subject matter. Nevertheless, MPA's having made an agreement with the member employer makes the publication's persuasive articles applicable to that specific employer and his employees. As far as adequately informing the plaintiff of its strictures, the statute meets any constitutional requirement.

(J.A. at 10). Implicit in the district court's position is the same conclusion reached by this Court: namely, that if the term "persuade" is clear standing on its own, the use of that term in the context of the statute does not give MPA a valid claim under the vagueness doctrine.

[14] MPA relies on *Thomas v. Collins*, 323 U.S. 578 (1944), to argue that the term "persuade" is not more specific than the term "solicit" which was found "impermissibly vague" by the Supreme Court in *Collins*. In *Collins* the State of Texas imposed a restraining order on a union organizer to prevent him from speaking to potential union members because

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IV

Finally, MPA argues that the 30 day reporting requirements constitute an impermissible "prior restraint" on free

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he had not obtained a registration card. The relevant Texas statutue required "[a]11 labor union organizers . . . to file with the Secretary of State, before soliciting any members for his organization, a written request . . . for an organizer's card . . . " The Supreme Court held that because it would have been impossible without "lauding unionism" and thereby "inviting" or "soliciting" membership, the statute had the effect of restricting the content of Thomas' speech.

Collins is distinguishable from this case in several respects. First, the term solicit, as used in the Texas statute, had many plausible meanings, some of which overlapped with protected speech:

> A speaker in such circumstances could avoid the words "solicit", "invite", "join". It would be impossible to avoid the idea . . . How one might "laud unionism", as the State and the State Supreme Court concede Thomas was free to do, yet in these circumstances not imply an invitation, is hard to conceive. This is the nub of the case . . . The feat would be incredible for a national leader, addressing such a meeting lauding unions and their principles, urging adherence to union philosophy, not also and thereby to suggest attachment to the union by becoming a member.

Thomas, 323 U.S. at 534-35. "Persuade", as defined in § 203(b), is far more precise. "Persuader activity" only triggers the statute if it takes place pursuant to an agreement with an employer, addresses itself to the subject of the employee organizing rights and collective bargaining, and is directed at employees of an employer. In our view, the key term of § 203 is as carefully delineated, defined, and articulated as one could reasonable expect within a statutory framework. There is simply no comparison to the ambiguity surrounding the term "solicit" in the Texas statute.

Second, and more important, the consequence of triggering the Texas statute was to enjoin all speech: "The threat of the restraining order, backed by the power of contempt, and of arrest for crime, hung over every word." *Id.* at 534. A finding of "persuader activity" in the LMRDA

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speech. The district court held that the "persuader agreement" occurs when MPA's members join the Craftsmanship program. Because a report must be filed under § 203(b) by MPA within 30 days after the member has joined the Craftsmanship program, and because this filing may be required before "Insight" is actually published, in certain circumstances MPA may in fact be required to comply with the reporting requirements "even when 'Insight' turns out to be totally innocuous." Appellant's brief at 18. In MPA's view, therefore, requiring the Association to determine in advance of a publication date whether to make "burdensome financial disclosure" amounts to a prior restraint. *Id.*

We find no merit in this argument. As a general matter, prior restraints have only been held to exist where there is a direct restraint on speech. Commonly that restraint takes the form of a court order enjoining speech activity. *See Nebraska Press Association v. Stuart*, 427 U.S. 539 (1976); *New York Times Co. v. United States*, 403 U.S. 713 (1971); *Near v. Minnesota*, 283 U.S. 697 (1931).[15] This case simply does not involve a direct restraint. The Secretary does not

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context only triggers disclosure requirements. Thus even if protected speech were to trigger the statute, that speech would still be heard. Given the stark choice between an injunction or speech, a heavier burden rested on the drafters of the Texas statute to articulate the compelling government interests at stake and define terms as carefully as possible.

Indeed, the vast majority of cases where the Supreme Court has found statutes to be impermissibly vague involve situations where the statutory sanctions at issue curtailed all speech, or involve terms so vague as to proscribe inadvertently an extended range of activity. *See, e.g., Coates v. Connecticut*, 402 U.S. 611 (1971) (striking down ordinance punishing individuals for conducting "themselves in such a manner annoying to persons passing by . . ."); *Cox v. Louisiana*, 379 U.S. 536 (1965) (striking down ordinance prohibiting one from agitating "to arouse from a state of repose, to molest, to interrupt, to hinder, to disquiet."). This clearly is not our case.

15 *Thomas v. Collins*, 323 U.S. 516 (1945), relied on by MPA on heavily in its brief, *see* note 14 *supra*, involved this type of restraint.

seek to enjoin speech activity, but rather merely seeks disclosure. MPA remains free to distribute whatever it wants, provided it complies with the reporting and disclosure requirements.

The Supreme Court has never analyzed a disclosure law that may require persons to file reports before engaging in speech as a prior restraint. The Federal Election Campaign Act, for example, upheld in *Buckley*, requires committees and candidates to file reports of contributions received in excess of $1,000 within 10 days of the calendar quarter in which the contributions are accepted. 2 U.S.C. § 434(a). The Act also imposes certain time limits for independent expenditures made after the fifteenth day before the election. 2 U.S.C. § 434(e). The filings must be made before the candidate or committee engages in "speech" activity. The *Buckley* court held that the burdens imposed by these provisions, specifically § 434(e), were "no prior restraint, but a reasonable and minimally restrictive method of furthering first amendment values by opening the basic processes of our federal election system to public view." *Buckley*, 424 U.S. at 82. Similarly, in *United States v. Harriss*, 347 U.S. 612 (1954), the Supreme Court upheld the Federal Regulation of the Lobbying Act, 2 U.S.C. §§ 261 *et seq.*, which requires lobbyists (as defined in the Statute) to register and make disclosure "before doing anything in furtherance of this object." 347 U.S. at 616, n.2. Clearly by the plain language of its opinion the Court refused to view the disclosure requirements as a prior restraint. We find nothing in the provisions of the LMRDA that leads this court to conclude that the disclosure provisions at issue here should be subjected to any different analysis than that employed by the Supreme Court in *Harriss* and *Buckley*.

V.

The LMRDA was not conceived in haste. It represents a carefully considered and crafted legislative response to chronic and serious problems that have persistently plagued union-management relations and threatened the chances for industrial peace. The disclosure and reporting requirements of § 203(b) are an integral part of that effort to promote harmonious labor relations. Designed to deter corruption in an area that Congress concluded was "inherently suspect" and "subject to abuse," these provisions are remarkably similar to other disclosure and reporting schemes upheld by the Supreme Court in related contexts. Just as the Federal Elections Campaign Act reviewed in *Buckley* and the Lobbying Act upheld in *Harriss* provided such needed sunlight in two areas prone to corrupt activity, so the disclosure provisions of the LMRDA expose "persuader activity" to the effective "disinfectant" of public scrutiny. *Buckley*, 424 U.S. at 67, *quoting* L. Brandeis, *Other People's Money* 72 (1933).

Section 203(b) achieves its goal of disclosure in a manner that does not unconstitutionally burden first amendment rights of speech and association. When the four factors of the *Buckley* balancing test are carefully weighed, it is clear that the government's interests in the Statute are compelling, the degree of infringement is minimal, the purpose of the Statute is substantially related to its requirements, and the level of disclosure required is carefully tailored to the goals of the Statute.

Likewise, § 203(b) defines the conduct that will trigger the disclosure and reporting requirements with sufficient precision to "give the person of ordinary intelligence a reasonable opportunity to know what is prohibited," and when triggered the Statute does not impose a direct restraint on speech. Thus, the Statute achieves its purpose without denying to MPA due process and first amendment

rights protected under the vagueness doctrine, and without imposing a prior restraint on MPA's protected speech.

For these reasons the judgment of the district court is

AFFIRMED.

In The United States District Court

FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

MASTER PRINTERS OF AMERICA, *Plaintiff,* *v.* RAYMOND DONOVAN, Secretary of Labor, United States Department of Labor, *Defendant.*	CIVIL ACTION NOS. 78-720-A and 78-721-A (CONSOLIDATED)

ORDER

For the reasons set forth in the Memorandum Opinion this day filed, it is

ORDERED and DECLARED that the reporting requirements of § 203(b) of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 433(b), facially and as applied to the plaintiff, Master Printers of America, are not unconstitutional.

. . . . . .
United States District Judge

Alexandria, Virginia
October 4th, 1982

In The United States District Court

FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

MASTER PRINTERS OF AMERICA,

Plaintiff,

v.

RAYMOND DONOVAN, Secretary of Labor, United States Department of Labor,

Defendant.

CIVIL ACTION NOS. 78-720-A and 78-721-A

(CONSOLIDATED)

MEMORANDUM OPINION

Again before the court on remand, *Master Printers of America* v. *Marshall*, No. 80-1578 (4th Cir., June 1, 1982) (UP), this action was the subject of an evidentiary hearing on September 22, 1982, addressing the constitutional issues of freedom of association, vagueness, freedom of speech and prior restraint, raised by the plaintiff.

The plaintiff presented four witnesses (it was stipulated that two additional witnesses, if called, would testify substantially as did witnesses Clouse and Bobo). The defendant presented no evidence. Both parties relied also on exhibits filed and testimony adduced at previous hearings in the matter.

The plaintiff's former general counsel, Mr. Doesburg, who now writes articles for "Insight"[1] under the caption "View From All Over," testified that he now hesitates to write and refrains from writing articles which he characterizes as the mere reporting of (1) events in Arizona involving unions and benefits of employees whose employer was not union affiliated, (2) some circumstances concerning the Air Controllers Union, and (3) a situation in Oklahoma where a union lost three elections and had to move its headquarters because of insufficient members. He feels that reporting on the foregoing and any use of the word "union" may trigger the reporting requirements of Section 203(b) of the Labor-Management Reporting and Disclosure Act (LMRD), 29 U.S.C. § 433(b). He reiterated that the purpose of his articles was to treat subjects of technical interest to printers, report on current events relative to employees and their jobs, and conditions in the industry. He further testified that it was not his purpose to "persuade" employees but to give them facts from which an employee could make an intelligent decision. He stressed that none of his articles was directed to a specific union or organization drive nor did any of them contain a direct appeal to an employee or a member as to how they should vote.

Mr. Doesburg further testified that he had difficulty knowing what direct, much less indirect, persuasion, meant, since he made a distinction between "persuasion" as appealing to or predicated upon an emotional state as opposed to "argument" which was based on logic. He complained of a lack of guidelines for determining what constitutes persuasion under § 203(b).

He as well as other witnesses for the plaintiff testified that Master Printers' membership lists and employer dues, both vulnerable to the reporting requirements of § 203(b),

[1] The magazine "Insight" and its relationship with the plaintiff, its member employers and the Craftsmanship Program are chronicled in prior opinions of this court and the Court of Appeals.

are treated as confidential; that revelation of the lists and dues would permit union organizers to use and exaggerate an employer's membership and degree of commitment; that many employers did not want to be publicly associated with an association perceived as being anti-union; and that, since the amount an employer pays in dues is based on the employer's size, a diligent competitor could extrapolate the employer's size, employee work force, and volume of business from knowledge of an employer's dues.

Other witnesses, including representatives of both those MPA-member companies which participate in the Craftsmanship Program and those which don't, testified that their companies would have to reassess their MPA membership if the promise of confidentiality was not kept. They reiterated the concerns expressed by Mr. Doesburg and added that a competitor could derive other information such as growth trends, changing market conditions, and potential customers from the amount of dues paid.

Mr. Doesburg also pointed out that since the reporting requirements mandated reporting within thirty days, and since "Insight" usually did not reach a new member for six months after membership, the publishers of "Insight" had no way of knowing, before the expiration of the thirty days, whether they were required to submit a report. Mr. Doesburg's opinion regarding the importance of confidentiality was corroborated by the Executive Director of MPA's Maryland affiliate.

Vagueness

Whether use of the term "persuade" to define those who must meet the § 203(b) reporting requirements violates the Fifth Amendment guarantee of due process depends upon whether, as used in the legislation, it provides notice of its requirements so that those subjected to its provisions may have an opportunity to conform their conduct to it, i.e., to comply with or avoid its prohibitions. *Grayned* v. *City of*

Rockford, 408 U.S. 104 (1972); *Winters* v. *New York*, 333 U.S. 507 (1948). The term "persuade" meets this test. It ". . . conveys sufficiently definite understanding and practices." *United States* v. *Petrillo*, 332 U.S. 1, 8 (1947). Persuade is a common every day word—easily capable of being understood.[2] Were it being used to *prohibit* speech, in a First Amendment setting, it might well be controlled by those cases, such as *Thomas* v. *Collins*, 323 U.S. 516, 534 (1945), which outlawed the use of such terms as "invite" or "solicit" in such a setting. Although the Court in *Buckley* v. *Valeo*, 424 U.S. 1, 39-59 (1976), ultimately found the Federal Election Campaign Act expenditure ceilings unconstitutional on First Amendment grounds, it avoided holding the act unconstitutionally vague by limiting the definition of the term "relative to" to "communications that include explicit words of advocacy of election or defeat of a candidate." *Id.* at 43-44. MPA argues under *Buckley* that the definition of "persuade" should be limited "to activities directed towards a particular company's employer or to a specific union organizing campaign." Under § 203(b), however, the term "persuade" is used only in connection with one who has entered into an "agreement" with an employer. Admittedly, "Insight" acts to "persuade" employees of the member employer under § 203(b) by publishing anti-union articles perhaps having another employer or union, or labor-management relations in general, as its subject matter. Nevertheless, MPA's having made an agreement with the member employer makes the publication's persuasive articles applicable to that specific employer and his employees. As far as adequately informing the plaintiff of its strictures, the statute meets any constitutional requirement.

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[2] The court is not persuaded to complicate the word by the semantic distinction between emotion related influencing and logic related influencing as advocated by Mr. Doesburg. Nor does the word need guidelines to explain it.

First Amendment

The First Amendment argument includes both the freedom of speech and freedom of association issues.

Mr. Doesburg's reluctance to write the articles, far from being evidence of "chilling," appears to the court to be more an admission that he is unable to write an article that is merely informative, as he says is his desire, as to conditions and technical advances in the industry, without at the same time taking a position in which he undertakes to persuade his readers. It may well be that an article containing his point of view, written in a persuasive manner or factual information in the context of supporting that point of view, is more interesting than pure uneditorialized facts. But that it not a problem of constitutional dimension.

Assuming, however, that there is some chilling of the freedom of speech, "... there are governmental interests sufficiently important to outweigh the possibility of infringement, particularly when the 'free functions of our national institutions' is involved." *Buckley* v. *Valeo*, supra at 66. "These include the government's power to inform itself through investigations 'in order to act and protect its legitimate and vital interests.' " *Marshall* v. *Stevens People & Friends for Freedom*, 669 F.2d 171, 178 (4th Cir. 1981), quoting *Gibson* v. *Florida Legislative Investigation Committee*, 372 U.S. 539, 544 (1963). In other words, there must be a balancing of the right infringed and its extent against the interests of the government sought to be protected by the legislation in question. The government interest to be protected by the reporting requirements is revealed by the legislative history of those requirements, as outlined in *Marshall* v. *Stevens People & Friends for Freedom*, *supra* at 178-79. Those interests clearly, in the court's view, outweigh any possible infringements on the freedom of speech as set forth by Mr. Doesburg. *United States* v. *Harriss*, 347 U.S. 612 (1954); *Wirtz* v. *Fowler*, 372 F.2d 315, 334 (5th Cir. 1966);

Donovan v. *MPA*, 532 F. Supp. 1140 (N.D. Ill. 1980) (appeal pending).

Similarly, although a closer question, the court finds any chilling of freedom of association occasioned by the public disclosure of the membership and dues of the members of MPA to be outweighed by those same governmental interests. The court must view with some skepticism the assertion that merely from the amount of dues a company/employer pays, even with knowledge as to how those dues are calculated, be it on gross sales or assets, there is a competitor so astute as to derive all the information attested to. Publicly held corporations must of course reveal that information, and it is available in business license taxing entities. Knowledgeable persons in the industry surely know who is a member of a union and who is not. Moreover, the testimony indicates that membership in MPA was know to union organizers in at least one labor organization attempt. Solicitors, while annoying, are a concomitant of any business.

While speculation of dire consequences of disclosure was advanced by the plaintiff's witnesses, nothing is before the court to indicate it is not just that—speculation. No actual or reasonably probable harassment or reprisal, such as that present in *NAACP* v. *Alabama*, 357 U.S. 449 (1958), is present here.

Prior Restraint

This argument rests on the thirty day reporting requirement which might accrue prior to the time, estimated at least six months after membership is accepted, when the magazine "Insight" reaches the employer. This is more a theoretical than real problem. It is inconceivable that an employer would enter into an agreement which contemplates the entry into its employees' homes of a magazine addressing employee/employer relations without

knowing the nature of that magazine's contents. Additionally it assumes a naivete of an employer about MPA and its program that the court cannot accept. More importantly, the reporting requirement is on MPA, not the employer. Surely MPA knows of the content of its publications within thirty days of its agreement with a given employer. The court thus rejects any question of prior restraint as a result of the requirement of reporting within thirty days from the date the agreement between MPA and an employer.

. . . . . .
United States District Judge

Alexandria, Virginia
October 4th, 1982

United States Court of Appeals

FOR THE FOURTH CIRCUIT

No. 80-1578

MASTER PRINTERS OF AMERICA,

Appellant,

v.

RAY MARSHALL, SECRETARY OF LABOR, UNITED STATES DEPARTMENT OF LABOR,

Appellee,

MANAGEMENT RESOURCES ASSOC., INC., WESTERN CAROLINA INDUSTRIES, INC., CAPITAL ASSOCIATED INDUSTRIES, INC., MANAGEMENT RESOURCE CENTER, INC., CASCADE EMPLOYERS ASSOCIATION OF THE PACIFIC NORTHWEST, CENTRAL PIEDMONT EMPLOYERS ASSOC., ASSOCIATED EMPLOYERS OF ILLINOIS, INDUSTRIAL COUNCIL, INC., IDAHO EMPLOYERS COUNCIL, INC., and unknown others similarly situated and of like interest,

/A *Amici Curiae.*

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, AT ALEXANDRIA. ALBERT V. BRYAN, JR., DISTRICT JUDGE.

Argued February 4, 1982. Decided June 1, 1982

Before HAYNSWORTH Senior Circuit Judge, and PHILLIPS,* Circuit Judge.

* Judge Murnaghan, a member of the hearing panel, disqualified himself from participation prior to oral argument. With the agreement of counsel the appeal was argued to and is decided by the other two members of the panel acting as a quorum. 28 U.S.C. § 46(d).

Francis T. Coleman (Jack N. Goodman, Maurice Baskin, Pierson, Ball & Dowd on brief) and Clifford Buelow for Appellant; William W. Taylor, United States Department of Labor (Robert E. Kopp, United States Department of Justice, Marshall H. Harris, Regional Solicitor, United States Department of Labor, Ronald G. Whiting, Deputy Solicitor of Labor, John F. Depenbrock, Associate Solicitor on brief) for Appellee.

PER CURIAM:

Master Printers of America (MPA) appeals from the second of successive judgments against it in consolidated cross-actions in which MPA challenged on constitutional and statutory grounds the authority of the Secretary of Labor to require MPA to file reports under Section 203(b) of the Labor-Management Reporting and Disclosure Act, 29 U.S.C. § 433(b) (1976) (the Act) and the Secretary sought to compel compliance. We find no error in the district court's determination on our prior remand that MPA had entered into a "persuader agreement" with certain of its employer-members so that, under the Act's provisions, MPA was required to file the reports in question. But because the district court erred in its conclusion that MPA's constitutional attack upon the statute had already been decided by this court adversely to MPA on an earlier appeal, we reverse the judgment in part and remand to the district court for first instance determination of the constitutional challenge.

I

MPA is a non-union trade association with a national membership of about 5,000 employers employing about 200,000 employees. Local associations recruit new members, who then become automatically affiliated with MPA, and arrange for participation in various MPA programs. One such project is MPA's Craftsmanship Program, initiated in 1950 to recognize and reward employee excellence through awards of Craftsmanship certificates to experienced workers nominated by their employers and positively evaluated by an expert panel. Roughly one-fifth of the MPA membership (900 employers) participates in this program; there are currently about 12,000 certified Craftsmen.

Craftsmen receive a permanent free subscription to the MPA-edited magazine, "Insight," a quarterly some 14-16 pages in length featuring items of general interest to the printing industry. "Insight" goes directly to employees'

homes, at addresses furnished by their employers. In a pamphlet for employers entitled "How MPA Serves You," the subjects of "Insight" are said to encompass "technological improvements . . . trends of products or processes, profit facts, advantages of the open shop, human-interest stories, awards events, and similar articles." Among its other publications MPA produces some documents, distributed to employers, with strong anti-union focus.

Section 203(b) of the Act requires any person who enters an agreement with an employer to engage in union or open shop "persuader activity" to disclose the arrangement by filing appropriate forms with the Secretary of Labor. Following a 3-year investigation of MPA, the Secretary concluded that employers in the Craftsmanship Program had entered a persuader agreement with MPA on the basis of certain "persuader" articles appearing in "Insight." Accordingly, the Secretary ordered MPA to submit to the Section 203(b) public reporting requirements concerning membership and receipts and disbursements for labor relations advice.

MPA sought an injunction in the district court against that requirement and a declaratory judgement that it was not required to file such reports. Simultaneously the Secretary sought by separate action to compel compliance. Specifically MPA claimed that it was not a "person" within the Act's meaning; that in any event it was not subject to the Act's reporting requirement because it had not entered into any persuader agreement with an employer; and ultimately that if it was covered, the Act was unconstitutional under the first amendment. The district court, on cross-motions for summary judgment in the consolidated actions, held against MPA on all points and required it to make disclosure as ordered by the Secretary. On MPA's ensuing first appeal, we affirmed that, as a trade association, MPA was a "person" within the Act's contemplation; but we remanded for determination of what we found a genuine factual issue as

to whether MPA had entered into a covered persuader agreement with employers. We did not directly address the constitutional challenge. *MPA* v. *Marshall*, No. 79-1513 (April 14, 1980) (unpublished).

Upon the remand proceedings in the district court the evidence was augmented by both sides. MPA presented the testimony of a number of local association managers, employers, and others acquainted with the development and promotion of the Craftsmanship Program. All of this testimony supported MPA's insistence that "Insight" was neither designed nor used as a vehicle of persuasion.

The Secretary selected 22 additional persuader articles beyond the seven from the issues of "Insight" initially presented to the court. Two pamphlets produced for employers described the contents of "Insight" as including pieces favorable to the open shop. Other brochures in which MPA counselled employers on resistance to union shops were also admitted into evidence.

On the basis of this conflicting evidence, the district court concluded that MPA and the employer-participants in the Craftsmanship Program had entered into a persuader agreement that subjected MPA to the reporting requirements of the Act.

In reaching this conclusion, the court declined to give conclusive effect to the testimony of MPA witnesses that "Insight" was not designed or intended to "persuade," reasoning that no MPA witness could realistically have been expected to admit persuasive intent. The court accepted as controlling principle the Secretary's contention that persuasion need be only *an* object, rather than *the* object of an employer's participation in the Program in order for a persuader agreement to be found. In the pamphlets and brochures distributed by MPA to Program participants, the court found manifestations of MPA's "known anti-union viewpoint." The persuader articles appearing in "Insight" were found by the court to be "unabashedly anti-union."

Finally, the court rejected as incredible "the employers' asserted lack of awareness and lack of concern about the content of a publication which they know goes directly to their employees' homes at the employers' direction."

These findings of fact, including those made on credibility determination, are not clearly erroneous. They fully support the court's conclusions of law, including its ultimate conclusion that MPA had entered into a persuader agreement with Craftsmanship Program participating employers, which brought MPA under terms of the Act's reporting requirements. We therefore affirm the court's determination of this issue.

II

We cannot agree, however, with the court's conclusion that our opinion on the prior appeal settled adversely to MPA its first amendment challenges to the Act. Solely as a matter of statutory construction, that opinion held that a trade association is a "person" within the meaning of the Act. We made no pronouncements bearing on MPA's present contention that Section 203(b) is an unconstitutional infringement of its free speech and associational rights.

The district court's erroneous determination that the first appeal had resolved the first amendment issues precluded MPA from elaborating its constitutional arguments on remand. [1] Since these issues were not considered by the court below and since determination would be enhanced by

[1] MPA argues that the statutory reference to persuader activity is unconstitutionally vague; that the registration requirement is content-based prior restraint; that the disclosure requirements infringe freedom of association; and that Section 203(b) is being improperly applied to the association's pure speech. *Cf. Marshall* v. *Stevens People and Friends for Freedom*, 669 F.2d 171 (4th Cir. 1981) (first amendment challenge by employees' association to Secretary's exercise of subpoena power under § 601 of Act partially allowed, partially denied; constitutionality of reporting requirements of § 203 not decided).

further factual development of questions such as vagueness and potential chilling effect, we reverse the rejection of MPA's constitutional claims and remand for further proceedings addressed to that issue.

AFFIRMED IN PART,
REVERSED AND
REMANDED IN PART.

In The United States District Court

FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

MASTER PRINTERS OF AMERICA,

Plaintiff,

v.

RAY MARSHALL, Secretary of Labor, United States Department of Labor,

Defendant

CIVIL ACTION NOS. 78-720-A and 78-721-A

ORDER

For the reasons set forth in the Memorandum Opinion this day filed, it is hereby

ORDERED that judgment is entered in favor of the Secretary of Labor in both actions; and that Master Printers of America submit to the reporting requirements as mandated by 29 U.S.C. § 433(b) (1976) for those employers whose employees are receiving the publication Insight as part of the Craftsman Program.

. . . . . .
United States District Judge

Alexandria, Virginia
July 24, 1980

In The United States District Court

FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

MASTER PRINTERS OF AMERICA,

Plaintiff,

v.

RAY MARSHALL, Secretary of Labor, United States Department of Labor,

Defendant.

CIVIL ACTION NOS. 78-720-A and 78-721-A

MEMORANDUM OPINION

In accordance with the directions of the Court of Appeals in this matter on April 14, 1980, an evidentiary hearing was held on July 22, 1980.

At issue was "whether the members participating in the Craftsmanship Program entered a persuader agreement with [the plaintiff]."[1] Slip op. 5, which would subject Master Printers of America (MPA) to the reporting requirements of 29 U.S.C. § 433(b).[2]

[1] As it did in the summary judgment opinion the court will refer to Master Printers of America (MPA) as the plaintiff in these consolidated cases and the Secretary of Labor as the defendant.

[2] Plaintiff's written submission argues that the First Amendment "precludes the Secretary's proposed application of the LMRDA to a national trade association . . ." Plaintiff's Trial Brief and Proposed Find-

(footnote continued on following page)

The hearing produced testimony and documentation which augments the evidence before the court at the time this court rendered summary judgment for the defendant in the following particulars:

1. No longer is there a paucity of persuader articles appearing in the quarterly publication Insight in the record.[3] Joint exhibit 2 reveals approximately 20 articles over the period Spring of 1973 through Autumn of 1977, contain unambiguously anti-union material. They are the following:

(a) Vol. 9, No. 1, Spring, 1973:

(i) Page 2, Letter signed by Edward C. Chalifaux, President, MPA.

(ii) Pages 4 and 5, entitled "Are you Contributing to the Strike Fund?" by Arch N. Booth, Executive Vice President, Chamber of Commerce of the United States.

(b) Vol. 9, No. 2, Summer, 1973, pages 4 and 5, entitled "Looking Ahead," in particular the last paragraph of the article.

(c) Vol. 9, No. 3, Autumn 1973:

(i) Page 3 entitled "What MPA Means to the Open Shop Employee" by Kurt Volk, Jr., President, MPA.

(ii) Page 5, entitled "Union Label Loses to Open Shops."

(footnote continued from preceding page)
ings of Fact and Conclusions of Law at 12. However the applicability of the reporting requirements to a trade association is not an issue before this court on remand since that part of the summary judgment was upheld by the Fourth Circuit. Slip op. at 4.

[3] In the court's Memorandum Opinion of May 9, 1979, it was noted (fn. 3) that the parties had stipulated that only certain articles mentioned unionism or encouraged employees to join a union.

(iii) Page 10, entitled "Perspective, Decertificiations" by Donald E. Sommer, Executive Vice President, MPA.

(d) Vol. 9, No. 4, Winter, 1974:

(i) Pages 10 and 11, entitled "Perspective ITU Pension Plan Insolvent" by Donald E. Sommer, Executive Vice President, MPA.

(e) Vol. 10, No. 3, Autumn, 1974, pages 4 and 5, entitled, "Speak Up for Freedom and Win Big Money."

(f) Vol. 10, No. 5, Winter, 1975, page 11, entitled "Have you Entered MPA's Big Money Contest?"

(g) Vol. 11, No. 1, Spring, 1975, pages 5 through 9, entitled "Liberty and Labor in the Jewish Tradition" by Michael S. Kogan.

(h) Vol. 11, No. 2, Summer, 1975:

(i) Pages 2 and 3, entitled "View From All Over" by John H. Doesburg, Jr.

(ii) Page 10, entitled "Another Strike Against the General Welfare."

(i) Vol. 11, No. 4, Winter, 1976, pages 3 through 7, material referring to a contest entitled "Speak up For Freedom."

(j) Vol. 12, No. 1, Spring, 1976, page 2, entitled "Of Bananas and Top Bananas."

(k) Vol. 12, No. 2, Summer, 1976, pages 2 and 3, entitled "View From All Over" by John H. Doesburg, Jr.

(l) Vol. 12, No. 3, Autumn, 1976:

(i) Pages 2 and 3, entitled "View From All Over" by John H. Doesburg, Jr., in particular a paragraph subtitled "A Tragedy For Union Employees."

(ii) Page 4, entitled "American Freedom—Union Style."

(m) Vol. 12, No. 4, Winter, 1976, page 3, entitled "ITU Fraternal Pension Plan Goes Bankrupt."

(n) Vol. 13, No. 1, Spring, 1977, pages 11 and 12 entitled "What is a Whistle Worth?"

(o) Vol. 13, No. 2, Summer, 1977, page 2, entitled "View From All Over" by John H. Doesburg, Jr.

(p) Vol. 13, No. 3, Autumn, 1977, pages 2 and 3, entitled "View From All Over" by John Doesburg, Jr.

2. There is evidence that pamphlets made available to member employers entitled "How PLA Serves" (Def. Ex. 3, p. 6) and "Master Printers of America Handbook of Services" (Def. Ex. 5, p. 13) describe Insight and its predecessor "Highlights and Sidelights" as covering subjects such as the advantages of the open shop.

3. Various pamphlets, not shown to have been sent by MPA to employees, but sent to and available to employers, advise employees on how to deal with union organization drives and to maintain an open shop (Def. Exs. 3 and 5) and include pamphlets with titles such as "What's the Cost—the high costs of union membership in money and freedom: (Def. Ex. 7), and "I Want Out - Advice to Employers Who Want to Understand All the Legal and Proper Ways Their Employees and Their Company Can Free Themselves From a Union Contract" (Def. Ex. 8). A pamphlet entitled "Master Printers of America, 30 Years of Progress and Service" (Def. Ex. 4) discusses the publication Insight as follows:

> Each craftsman receives a complementary subscription to a quarterly publication, "Insight," which is mailed to his home. It is the only publication which is actually mailed directly to an employee in a member company's plant.

4. There was testimony of various employer-members of MPA, all of whom testified that they did not intend to enter into any arrangement with MPA in order to have employees persuaded to join or not join a union.

There was testimony of the coordinator of organizing for the Graphic Arts International Union as to the surfacing of Insight in the hands of employees and the occurrence of award ceremonies for craftsmen at or about the time of union organizational activities. [4]

* * *

While the court cannot deny the relevance of testimony as to the subjective intent of numerous MPA members who testified or whose testimony was stipulated, neither must the court accept it as conclusive on the issue of intent, even when it is not rebutted by direct testimony (as it rarely can be). It is unrealistic to expect a MPA member called by the plaintiff to say that he intended to persuade his employees to a non-union viewpoint by his participation in the Craftsmanship Program.

Given the known non-union viewpoint of MPA as exemplified by its publications other than Insight, the description of Insight afforded the members by MPA in its pamphlets, and the availability of Insight and the regular receipt and reading of it by many employers, the court simply cannot accept the employers' asserted lack of awareness and lack of concern about the content of a publication which they know goes directly to their employees homes at the employers' direction. Even a cursory reading of the enumerated articles reveals that they are unabashedly anti-union. One need not speculate a great deal to imagine the concern and reaction of these same employers if pro-union articles were published.

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[4] This testimony was successfully refuted, in the court's view, by the contrary testimony of plaintiff's witness Doesburg; and the court does not rely upon the testimony for its decision in the case.

Nor does the absence of any testimony from a persuaded employee detract from the defendant's case. Successful persuasion is not the pin on which the reporting requirements hinge.

In sum, the court finds that the defendant has borne the burden of proving an arrangement between MPA and its members. Judgment will be entered in favor of the defendant, requiring MPA to comply with the reporting requirements of 29 U.S.C. § 433(b) as to those employers whose employees are receiving the publication Insight as part of the Craftmanship Program.

.....
United States District Judge

Alexandria, Virginia
July 24th, 1980

United States Court of Appeals

For The Fourth Circuit

No. 79-1513

MASTER PRINTERS OF AMERICA,

Appellant,

v.

RAY MARSHALL, SECRETARY OF LABOR,

Appellee.

CENTER ON NATIONAL LABOR POLICY,

Amicus Curiae/A.

MANAGEMENT RESOURCES ASSOCIATION, INC., WESTERN CAROLINA INDUSTRIES, INC., CAPITAL ASSOCIATED INDUSTRIES, INC., INDUSTRIAL ASSOCIATION OF THE MOHAWK VALLEY, CASCADE EMPLOYERS ASSOCIATION OF THE PACIFIC NORTHWEST, CENTRAL PIEDMONT EMPLOYERS ASSOC., AND ASSOCIATED EMPLOYERS OF ILLINOIS,

Amici Curiae/A.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA, AT ALEXANDRIA. ALBERT V. BRYAN, JR., DISTRICT JUDGE.

Argued March 3, 1980 Decided April 14, 1980

Before HAYNSWORTH, Chief Judge,
RUSSELL and SPROUSE, Circuit Judges.

Francis T. Coleman (Jack N. Goodman, Maurice Baskin, Pierson, Ball & Dowd on brief) for Appellant; Walter S. Davis (Clifford B. Buelow, Steven R. Berger, Stover, &

Leichtfuss, S. C. on brief) as Amici Curiae Management Resources Association, Inc.; William W. Taylor, U.S. Dept. of Labor (Alice Daniel, U.S. Dept. of Justice; Thomas K. Berger, Assistant U.S. Attorney; Carin A. Clauss, Solicitor of Labor, Beate Bloch, Associate Solicitor on brief) for Appellee; (Baker Armstrong Smith, Tedford Brooke Radway on brief) as Amicus Curiae Center on National Labor Policy.

PER CURIAM:

This is an appeal from a judgment of the district court ordering Master Printers of American (MPA), a trade association of non-union shops, to submit to the reporting requirements of 29 U.S.C.A. § 433(b). That section provides that any person who enters an agreement with an employer to engage in union or open shop persuader activity must disclose the arrangement by filing appropriate forms with the Secretary of Labor. The district court's judgment came on cross motions for summary judgment. We reverse in part and remand for an evidentiary hearing.

I.

MPA offers members various services in the labor/management context. One such service is the Craftsmanship Program. The Craftsmanship Program is used by members to recognize those employees who have met certain minimum professional standards. The employer nominates those persons he considers worthy of recognition and the nominations are reviewed by a committee of industry experts. MPA supplies the Craftsmanship certificates which are generally awarded at a banquet sponsored by the employer. There are approximately 12,000 "Craftsmen."

All employees who are designated Craftsmen are given a permanent subscription to *Insight*, an MPA sponsored publication which is mailed directly from MPA to those persons *Insight* is a quarterly publication of approximately

14 pages which highlights items of interest to members of the printing trade.

The district court found that between 1974 and 1977, eight articles appeared in *Insight*, the purpose of which was to either directly or indirectly persuade employees to reject unionization. The bulk of these articles was in Volume 10, 1974. Based on this finding, the district court held that under the circumstances MPA was required to comply with the reporting requirements of 29 U.S.C.A. § 433(b).

On appeal MPA argues that the elements of § 433(b) have not been met since on one element (intent) there is a disputed material issue of fact. MPA further contends that § 433(b) was not intended to cover trade associations such as itself.

II.

Section 433(b) has two key elements. First, the entity being compelled to file reports must come within the definition of "person" found in 29 U.S.C.A. § 402(d). We agree with the district court that the clear language of § 402(d) encompasses trade associations such as MPA. The legislative history of the Labor-Management Reporting and disclosure Act does not warrant a contrary conclusion. Next, this person must have entered an agreement an object of which is to persuade employees on the question of their right to bargain collectively. We agree with MPA that summary judgment was not appropriate on this point.

There is a dispute on the question of whether members participating in the Craftsmanship Program entered a persuader agreement with MPA. The Secretary argues that the subjective intent of the members is irrelevant and that they should be presumed to have agreed to promote the persuader articles published in the issues of *Insight*. A number of members who used the Craftsmanship Program, however, submitted affidavits denying any knowledge of *Insight*

magazine. In light of these affidavits and considering the paucity of persuader articles which appeared in *Insight* during the four-year period, we believe that the presumption urged by the Secretary and adopted by the district court is inappropriate. Another factual situation might justify such a presumption. The facts here do not. If treated as a permissible inference, MPA would be entitled to present evidence to the contrary. A material question of fact is in dispute. Therefore, summary judgment was inappropriate.

REVERSED IN PART,
AND REMANDED.

In The United States District Court

FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

MASTER PRINTERS OF AMERICA, *Plaintiff,* *v.* RAY MARSHALL, Secretary of Labor, United States Department of Labor, *Defendant.*	CIVIL ACTION NOS. 78-720-A and 78-721-A

O R D E R

The Order of May 9, 1979 is corrected to read as follows:

For the reasons given in the Memorandum Opinion this day filed, it is hereby

ORDERED that summary judgment is awarded the Secretary of Labor; and that Master Printers of America submit to the reporting requirements as mandated by 29 U.S.C. § 433(b) (1976) for those employers whose employees are receiving communications from Master Printers of America of the type at issue in these actions.

. . . . . .
United States District Judge

Alexandria, Virginia
May 10th, 1979

In The United States District Court

FOR THE EASTERN DISTRICT OF VIRGINIA
ALEXANDRIA DIVISION

MASTER PRINTERS OF AMERICA,

Plaintiff,

v.

RAY MARSHALL, Secretary of Labor, United States Department of Labor,

Defendant.

CIVIL ACTION NOS. 78-720-A and 78-721-A

MEMORANDUM OPINION

This matter comes before the Court on cross motions for summary judgment, both parties agreeing that there are no material questions of fact at issue. [1] Oral argument was heard on May 4, 1979.

The facts are not in dispute and the Court adopts as part of its findings of fact the Stipulation of Fact (JX 1) filed by the parties. Plaintiff Master Printers of America (MPA) is a trade association composed of about 5000 non-union printing companies. It is a division of Printing Industries of

[1] Cases CA 78-720-A and 78-721-A have been consolidated. On October 25, 1978 Master Printers of America (MPA) filed suit against the Secretary of Labor seeking declaratory judgment as to whether it must comply with 29 U.S.C. § 433(b). On the same day the Secretary of Labor filed suit against MPA, seeking to compel MPA to comply with the statute. MPA will be referred to as the plaintiff, the Secretary as the defendant.

America (PIA), a non-profit organization. Also under PIA's auspices is Union Employers of American (UEA), whose members are unionized, or partially unionized, employers. An employer automatically becomes a member of PIA, and simultaneously either MPA or UEA[2] by joining a local affiliated association. Dues are paid to the local affiliates, who in turn pay PIA pursuant to a formula based on sales volume. PIA then keeps 3% of the revenues for its own reserve account and divides one quarter of the remainder between MPA and UEA equally. There are no special levies or assessments for MPA members.

Among its programs, MPA offers the Craftsmanship Program, which undertakes to recognize and honor employee expertise and perpetrate good employee-management relations. Candidates who meet the minimum work experience requirements and are nominated by their employers, are reviewed by a committee of industry experts. The actual award generally is presented at an awards banquet.

One of the benefits conferred on the winners of the Craftsmanship award is a subscription to an MPA quarterly magazine called *Insight*, which is delivered directly to the employee's home. Craftsmanship certificate holders receive issues of *Insight* without charge, while non-Craftsmanship employees specifically designated by the employer may receive a subscription costing $2.00 per year. The magazine contains articles of general interest to employees in the printing industry and other articles which feature the employer's viewpoint.[3] It is these articles that are the crux of the present dispute. The Secretary maintains that these

[2] Less than 6% of PIA's members belong to both MPA and UEA.

[3] The parties have stipulated that with the exception of the articles in dispute, no other article mentions unionism or encourages employees to join a union.

articles undertake subtly to persuade employees from joining the union, within the meaning of 29 U.S.C. § 433(b)[4] and as such MPA is required to file reports mandated by that statute. MPA contests the characterization of the *Insight* articles as persuader material and asserts that it should not be subject to the reporting requirement.

MPA challenges application of the statute in the present circumstances, arguing that the legislative history reveals an intent to reach union busting middlemen whose covert activities interferred with the collective bargaining

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[4] "(b) Every person who pursuant to any agreement or arrangement with an employer undertakes activities where an object thereof is, directly or indirectly—

> (1) to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing; or
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> (2) To supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding;

shall file within thirty days after entering into such agreement or arrangement a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing the name under which such person is engaged in doing business and the address of its principal office, and a detailed statement of the terms and conditions of such agreement or arrangement. Every such person shall file annually, with respect to each fiscal year during which payments were made as a result of such an agreement or arrangement, a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing a statement (A) of its receipts of any kind from employers on account of labor relations advice or services, designating the sources thereof, and (B) of its disbursements of any kind, in connection with such services and the purposes thereof. In each such case such information shall be set forth in such categories as the Secretary may prescribe." 29 U.S.C. § 433(b).

process. MPA maintains that Congress' motivation was to stop actions, ranging from the hiring of goons to strongarm union sympathizers to the negotiations of sweetheart contracts and the bribery of officials. *Insight* has been openly published and acknowledged and it is conferred as an honor on an outstanding employee; MPA argues that *Insight* is not the type of operation the statute seeks to control.

Unarguably, the Act was drafted to protect against such covert evils, although there is no convincing evidence that these were the only types of abuses Congress had in mind. The statute is broadly worded to cover not only such flagrant violations of free collective bargaining, but more subtle abuse as well. The definition of person, pursuant to 29 U.S.C. § 402(d), clearly encompasses a wide range of entities. *See* below.

In order to hold MPA to the reporting requirement the key elements of the statute must be met: (1) MPA must fall within the definition of a person within the meaning of the statute; (2) there must have been an agreement or an arrangement between MPA and the employer; and (3) the object of the agreement or arrangement is to persuade employees to exercise or not to exercise the right to bargain collectively. [5]

Pursuant to 29 U.S.C. § 402(d), a person, for purposes of the Labor Management Reporting and Disclosure Act (the Act), includes "individuals, labor organizations, partnerships, *associations*, corporations, legal representatives, mutual companies, joint-stock companies, trusts, *unincorporated organizations*, trustees, trustees in cases under Title II, or receivers" (emphasis added). According to MPA's

[5] The Court reads the statute as requiring that the object of the agreement or arrangement be the direct or indirect persuasion of employees. *Wirtz v. National Welders Supply Co.*, 254 F. Supp. 62 (W.D.N.Y. 1966).

admission, it is an unincorporated division of PIA and functions as a trade association. It clearly fits within the meaning of person as intended by the Act.

Second, the Act requires that there be an agreement or arrangement [6] between MPA and its member employers. The evidence shows that once employers become members of MPA they may elect at anytime to subscribe to the Craftsmanship Program. Thus new members at some point are made aware that the Program is available to them. They are told that the Program's objectives are to "encourage and recognize the individual craftsman" (PX A) and that the magazine *MPA Insight* will be mailed directly to the employee. Thus the employers who join MPA are aware of the Program, its objectives and the existence of *Insight* and are presumed to know the consequences of their actions in joining the Program. *Cf. Radio Officers' Union of the Commercial Telegraphers Union v. National Labor Relations Board*, 347 U.S. 17, 44-48 (1954).

Of the 929 MPA employer members who participate in the Craftsmanship Program, each employer's motivation for joining the Program is subjective. Canvassing the employers as to their exact awareness of the Program's benefits and objectives and their real purposes in joining would be unwieldy and impractical. Moreover, reliance on testimony (such as that presented by the plaintiff's affidavits) as to the subjective state of mind of an employer to determine motivation is unrealistic. Thus the Court adopts the traditional, and quite reasonable, presumption that the employers understand the Program and intend to effectuate its natural consequences. In short, the Court assumes that each individual Craftsmanship employer has agreed with MPA as to the intent and purpose of the *Insight* articles.

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[6] In the Court's view, the statute's use of the word "arrangement" in addition to "agreement" indicates that there was contemplated a loose or tacit understanding, something less than a formal contract, without regard to a *quid pro quo* or enforceability.

The third element required by the statute is that the agreement or arrangement in question attempts to persuade. An examination of the articles in question discloses that the articles in fact do subtly, [7] as well as directly, [8] attempt to dissuade MPA employees from joining a union.

MPA argues that the present attempt to require reporting is unprecedented in that the Secretary has never sought enforcement of this statute against a trade association. MPA supports this allegation by reference to "the Shubert letter," Letter of Richard F. Shubert, Solicitor of Labor, to Stephen I. Schlossberg, General Counsel of UAW, dated November 13, 1972 (PX 3), wherein the Secretary ruled that mere membership in a trade association does not constitute an agreement or an arrangement within the meaning of the Act.

Present enforcement of the statute is not inconsistent with the Secretary's prior ruling. Membership in a trade association *per se* does not constitute an agreement or an arrangement, but when that organization functions as something more than a trade association, it must submit to the statute. It is not the function of a true trade association to disseminate literature in an attempt to persuade its members in exercising collective bargaining rights. Yet it is

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[7] The following articles are among those which indirectly dissuade employees from collective bargaining: Doesburg, John H., Jr., "View From All Over," *MPA Insight*, Vol. 10, No. 1, Spring 1974, p. 2-3; "A Word from the Wizard," *MPA Insight*, Vol. 10, No. 1, Spring 1974, p. 4; "Union Abuse of Members Exposed," *MPA Insight*, Vol. 10, No. 1, Spring 1974, p. 9; Doesburg, John H., Jr., "View From All Over," *MPA Insight*, Vol 10, No. 2, Summer 1974, p. 2-3; "Watch Those Authorization Cards," *MPA Insight*, Vol. 10, No. 2, Summer 1974.

[8] The following articles are among those the Court finds attempts to directly persuade employees in exercising collective bargaining rights: Robertson, William D., "The Advantages of Working in an Open Shop," *MPA Insight*, Vol. 10, No. 2, Summer 1974, p. 11-13; "Boston Blues," *MPA Insight*, Vol. 10, No. 3, Autumn 1974, p. 7; "Unions! Who Needs Em?" *MPA Insight*, Vol. 13, No. 2, Summer 1977, p. 10.

the express finding of this Court that MPA has in fact distributed such material. MPA cannot expect to hide behind its formal title of trade association once it begins to act beyond the role of a trade association.

MPA also contends that *Insight* could well have been sent to and distributed directly by the employer, thus circumventing the agreement or arrangement aspect, and ultimately, the reporting requirement. Short of committing an unfair labor practice, the employer is free to disseminate materials and otherwise attempt to persuade his employees against unionization. MPA argues that the entity which distributes the magazine is immaterial and does not change the nature of the publication. While the words themselves remain the same, the light in which the employees view the articles does change. Were *Insight* received directly from the employer, the employee more likely would expect the magazine to reflect a management point of view. [9] When delivered under the auspices of the independent trade association, the magazine is expected to be less partisan in tone and more industry-oriented in interest. Thus the publication of biased material from an independent source is more dangerous insofar as the employee is less suspect of an attempt to persuade.

In the Court's view, participation in the Craftsmanship Program, whose benefits include the sending of the magazine *Insight* directly to employees, constitutes an agreement or arrangement to persuade within the meaning of the

[9] MPA argues that the MPA logo is clearly marked on each copy of *Insight*, leaving no doubt as to the publisher, and furthering the impression that the magazine emanates from an independent source. The Court is unpersuaded that the presence of the MPA logo would overcome the subjectivity generated by distribution of the magazine on the employer's premises and pursuant to his evident approval.

statute. Summary judgment will accordingly be awarded the Secretary. [10]

. . . . . .
United States District Judge

Alexandria, Virginia
May 10th, 1979

[10] The result of the relief granted, far from onerous, requires only that MPA comply with the modest reporting requirements of the statute; and the Secretary only asks for that as to those employers who have applied to have their employees receive communications from MPA.

United States Court of Appeals

For The Fourth Circuit

No. 82-1990

MASTER PRINTERS OF AMERICA,

Appellant,

v.

RAYMOND J. DONOVAN, SECRETARY OF LABOR,

Appellee.

THE CENTER OF NATIONA LABOR POLICY, INC.

Amicus Curiae/A

CHAMBER OF COMMERCE OF THE UNITED STATES

Amicus Curiae/A

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Albert V. Bryan, Jr., District Judge.

Upon consideration of appellant's motion for stay of mandate pending application for writ of certiorari,

IT IS ORDERED that the motion is granted and the mandate of this Court is hereby stayed until *March 26, 1985,* to allow the appellant the opportunity to file an application for writ of certiorari with the United States Supreme Court.

Entered at the direction of Judge Ervin for a panel consisting of Judge Russell, Judge Ervin and Judge Butzner.

For the Court,

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CLERK

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86-187 (excerpts), 86th Cong
[1959] U.S. Cong. & Admin.

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BY MR. COLEMAN

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I was traveling about 125 to 135 thousand miles a year and visiting these plants. And the editor suggested that, having the intimate association with the various geographical areas and types of plants, I write an article giving observations on what was going on and what I saw in the printing industry.

Q And what are these articles that you write for the magazine called?

A They are called "A View From All Over". It was his idea that this would be a commentary on matters which were taking place throughout the United States in the printing industry.

Q And how often does this article entitled "A View From All Over" appear in the magazine?

A It has appeared in practically every issue of the magazine on a quarterly basis.

Q Now, what was your purpose in writing—you may have covered this, but what was your purpose in writing these articles under the heading of "A View From All Over", which appeared in the magazine?

A It was really threefold: Number 1, to point out anything that might be of interest from a technological or craft basis to employees; Number 2, to comment on current events which might affect the relationship between an employee and his job; and, Number 3, to give information with regard to conditions which existed within the industry which were not readily ascertainable by the individual employee or which were not commented upon in the daily press.

Q In writing these articles, Mr. Doesburg, was it your intent to persuade employees in the exercise of their rights to bargain collectively and be represented by the union under the National Labor Relations Act?

A In no way was the motivation of the articles for the employee to take any particular action, except that which he sought to take on his own initiative.

However, the purpose of the article was to give facts to all employees regarding all facets of employment and working conditions which would make it possible for him to make intelligent decisions, whether it was in connection with pension planning, group insurance, labor relations, whatever the matter might be.

Q Now, as you are aware, one of the key words or definitions that's at issue in this case is the term "persuasion" or "persuade". What is your understanding as an author of these articles of the term "persuasion"?

A Many years ago when I was in the union, I took a course called "Persuasion". And in that course persuasion was defined as an motivation or an appeal to take a particular action or come to a certain belief predicated upon an appeal to the emotions of the subject individual, as contrasted with argument, which was a motivation to perform a particular action or take a particular belief predicated upon a logical sequence of effectual presentations.

Q Using your definition, do any of the articles that you wrote for "A View From All Over" fit your definition of persuasion?

MR. DUBIN: I object, Your Honor. I think previously this Court has determined the articles themselves whether they were persuasive. That is not the issue before this Court this morning.

THE COURT: Well, the plaintiff makes the argument on its due process claim. I assume that the language of the statute, particularly the word "persuade" or "persuasion", is vague, and I think the test varies, whether it is sufficiently clear so that a person can regulate his conduct to conform to it.

I am sure there is a better definition than that, but that is generally it. I think this evidence is relevant to that issue.

BY MR. COLEMAN: *(Resuming)*

Q You may answer the question, Mr. Doesburg. Maybe I can rephrase it.

Do any of the articles that you have written for "A View From All Over" meet your definition of persuasion?

A No, they do not.

Q Now, at the time —

A *(Interposing)* However, I do want to add I am even more confused because I sure don't know what indirect persuasion it.

Q I was just going to ask you that. The term of the statute also refers to persuading directly or indirectly. What is your definition or understanding of the term "indirect persuasion"?

A In order to answer that I would have to make up a definition, which would be—or perhaps, by example, if an individual were going to seek employment and he was looking only at his wage rate, and I wrote an article in which I said, "If you are going to seek employment, there are other conditions to consider besides wages, and you should consider the company you are working for, the security, the job, the opportunity in the future," and as a result of making that individual think he decided to take a lower-paying job rather than a higher-paying job, I guess that might be indirect.

Q Now, at the time you wrote these articles were any of these articles directed to specific union organizing drives that were taking place?

A Not one. Not one.

Q Did you, in any of these articles, urge employees to vote for or against labor union representation?

A I did not. No articles contain any such language.

Q Now, some of the articles that you have written in "A View From All Over" have been labeled—or the claim has been made that they are indirectly persuasive. I think two of those articles—Just for an example, one of them dealt with an analysis of union bylaws and another dealt with inflation and its effect on pension programs. Those are two of the —

A *(Interposing)* I think the last one was anti-union. The first one was indirect persuasion.

Q Now, those articles that I have just mentioned have been labeled anti-union. Is that correct?

A The one in connection with the discussion of inflation was labeled anti-union. What I did was to take the present rate of inflation and project it to the year 2000, and then I took the cost of an automobile, the cost of dinner, and the cost of a home and projected in dollars what that would be if this inflationary spiral continued over the next 20 years.

Q Did you intend those articles to be anti-union?

A I don't see they have anything in the world to do with the union. I couldn't understand it, no.

Now, in connection with the other article that was labeled indirectly persuasive, the circumstance of that was I had been asked many times by employees if I had copies of the bylaws of the—local bylaws of the union. I did not. It appeared that the employees themselves did not have copies of the union bylaws, in this particular union.

I did, when I was in Milwaukee, come into possession of the bylaws of the Milwaukee local, because I knew that the subject of the bylaws, particularly the disciplines and

requirements in connection with the transfer of employment promotion and classification, was of interest to—generally to the employees in the industry. I reprinted that section of the bylaws.

Q What was your purpose in reprinting those sections under your article?

A To provide information which I knew the employees wanted and hadn't been able to get.

Q Did you intend to persuade them to any specific course of action by those articles?

A I don't think I could persuade them because the employees themselves in the various union plants had created those bylaws. So they must have wanted them. I merely pointed out what they were.

MR. DUBIN: Objection, Your Honor. That is speculation.

THE COURT: Objection overruled.

BY MR. COLEMAN: *(Resuming)*

Q You may continue.

A I merely pointed out what they were. And it's up to the individual as to whether he wants to work under that type of a condition or whether he does not desire to work under that type of condition.

Q All right. Now, Mr. Doesburg, since this lawsuit has been filed and has been pending, did you have any discussions with officials of MPA concerning what you should write in your articles?

A Yes, I did. Immediately after the decision was rendered by this Court, I was told by Mr. Jack Viehman, who was the president of Master Printers of America, that while this reporting requirement was in question, to refrain from making any—commenting in my articles on any issue

which might trigger a requirement of reporting either by our members or by the local association.

MR. DUBIN: Objection, Your Honor. That is hearsay.

THE COURT: Objection overruled.

BY MR. COLEMAN: *(Resuming)*

Q In light of that discussion with Mr. Viehman did this change your editorial policy or the subject matter that you included under your article?

A Yes, it did.

Q In what way?

A Just recently we had a situation in Arizona in which our copper mines are all down, primarily because of the price of copper and profitability of the copper industry. A reporter for the Arizona Republic found that there was one very healthy, prosperous, and operating mine which had not even laid off an employee, which was called the Bagdad Mine, located in a little town up in the mountains —

MR. DUBIN: Objection, Your Honor. What he's reading from is what a reporter found, not what he knows.

THE COURT: The question is whether under his First Amendment claim he was chilled, I believe is the word, from exercising what would ordinarily be his First-Amendment right to freedom of expression.

It seems to me what he heard, what he read doesn't go to the truth of that, but does go to whether he was inhibited because of the act or the possible reporting requirements of the act from doing what he would ordinarily have done. I think that it's hearsay if offered for the truth but not for the effect it might have had on him. Objection overruled.

BY MR. COLEMAN: *(Resuming)*

Q You may continue.

A I read the article that this reporter wrote when he went up and visited this mine. What he was attempting to ascertain was what factor existed at the Bagdad Mine that did not exist in the other copper mines. It stimulated my interest, so I went to Bagdad.

When I got there, I found a town, a model town, very similar in many ways to the way Hershey, Pennsylvania used to be, where the company did provide housing and various other benefits to the employees. I guess some of us might call it a rather paternalistic town.

But the main factor in interviewing the employees — interviewing the people in the town was that they all answered that the reason that they were able to operate and their jobs were secure and that their mine was the only one in the state operating was, and I quote what they said, that their fathers and their grandfathers had the sense to not affiliate with the mining unions, and as a result the company in the town could operate directly with the employees on a profitable basis, where the union mines in Arizona couldn't at this time.

I wanted to write an article on Bagdad, but because of the union reference which came constantly in talking with the people, I refrained from writing it because it would have violated the directive I had from the president of the association.

Q Had the reason that the Bagdad Mine continued to flourish while others did not been factors not associated with unions would you have been able to write this article?

A Yes, I would.

Q Now, were there any other examples of articles or information that you wanted to put into your column of "A View From All Over" that you refrained from doing because of your discussions with Mr. Viehman and because of the pendency of this lawsuit?

A Yes. I can give two examples particularly.

We had a situation in Oklahoma in which there were three union elections held, in which two were decertifications. One was a certification election. And in all three cases the unions lost in the elections. The result was that there were not sufficient numbers of employees in this particular union to have a local, and they moved their local headquarters from Oklahoma City to Tulsa because of this condition.

It was a matter of, I considered, of interest to a number of people, a large number of people in the printing family and would have commented and written rather extensively as to the issues in that campaign if I had not been under that program.

The other which I refrained from writing on, and I still would like to write it, is from experiences that I am receiving right now dealing with employees in Phoenix, Arizona in the air comptroller situation. I think that is a very unique situation because it's not a private industry labor dispute, but one in which the President of the United States took action, and I think it's significant and should be commented on.

Q Are you aware of any Labor Department guidelines as to what constitutes persuasion?

A No, I'm not.

Q Do you feel you have any guidance either under the Landrum-Griffin Act or regulations from the Labor Department as to what you can write without it resulting in the reporting requirements being made applicable?

A No, I don't. The thing that concerns me is that it seems as though I can't hardly—I can't mention the word "union" unless I do such in a laudatory manner.

Now, I have in many cases commented favorably on the activities of the union, but if the union is doing something which is detrimental to the industry and in that area, in my

opinion, I apparently cannot comment without triggering the reporting requirement.

Now, the association is particularly concerned on the triggering of the requirement of reporting, because many members of the printing industry, many people in the industry —

Q (Interposing) Let me get into that. I think I am just about to get into that area.

Now, you have been associated with the Master Printers for 30-plus years or so in one capacity—one official capacity or another?

A Right.

Q And you had intimate involvement with the members of that association. Is that correct?

A Correct.

Q Now, based on your position within the organization and your relationship to its members, what would be the effect on MPA members if in fact these financial disclosures were forced to be made public and filed with the Labor Department?

A I think basically three things would happen: Number 1, it would be a convenient checklist and prospective list for union organizations; Number 2, it would be a godsend to insurance agents, group insurance agents —

MR. DUBIN: Objection, Your Honor. I think this was already tried in an earlier proceeding as to the effect.

THE COURT: Objection overruled.

A *(Continuing)*—and people selling programs, like foreman training programs, audio-visual programs, for this reason: In a union shop, a group insurance agent does not have a good prospect because in most cases the union or the joint management union committee selects the carrier. If

you know the company is an open shop, you know that the company itself selects a carrier. I, as an insurance agent, certainly if I were looking for prospects would love to have such a list because it would eliminate half of my useless calls and save my time.

The same would be true on the foreman training program. It could be a veritable prospect list, not only in the union field but in the industrial field, due to the harassment and time-consuming problems of the employer.

Also, anyone who is conversant with the printing industry could take a dues figure—for example, if I know how much dues you pay into a trade association, it's a very simple thing for me to back the formula up, and I can tell approximately to within a couple of people how many people you employ. I can tell what your volume is. And this is a very important factor, competitively, in the industry itself from an economic standpoint.

Also, from the union organizer's standpoint, if I know what the dues are, I am not going to waste my time on a five-man shop when I've got right alongside of them a 40-man shop, and I can ascertain that without ever going out and looking at the premises. Just read the Federal Report.

Q Now, has the membership rolls within the Master Printers of America since you've been associated with them been maintained on a confidential basis?

A We have always maintained—our mailing list and membership list never gets out of the mailing vault at the headquarters in Washington.

Q Is the same true with respect to the dues that the members pay to the Master Printers?

A No one knows what the dues are except the executive staff of MPA.

Q Is that information ever made public?

A Never.

Q Why is that?

A Well, for two reasons.

Q I think you have touched on it.

A Number 1, most employers feel that that is a matter of private business. Number 2, as I say, if we had a mailing list which was available to the public, you would have a prospect list, like I just described, for sales, for programs, for union organizations, whatever it might be. And the employer himself, if he's going to get on such a list, is going to avoid being associated with that organization in many instances. Personally, in legal work, I am harassed daily with loads of junk mail and telephone calls, soliciting various things. And to that extent, if I do anything—I try to keep off those lists. And I can understand exactly how the other employers feel.

Q Historically, when the Master Printers came into being back in the late forties and early fifties, you were involved at the outset of the establishment of MPA? Is that correct?

A That is correct.

Q Did the members at that time or the potential members who were forming the Master Printers express any concern about having their identity at Master Printers made known?

A Yes. It was worse then even than it is now. It's still very prevalent. But particularly in the early fifties there was a feeling in the printing industry that if you didn't advertise the fact that you were non-union, nobody would find you. And there was great reticence to belong to any organization which might target an organization drive. Employers were then, and are today, particularly fearful not only of the harassment but the cost of defending an organization drive —

Q *(Interposing)* What costs would these be?

A Pardon?

Q What costs would these be?

A Well, your legal costs along in a certification case can run—in a certification case can run into several thousands of dollars.

Q Are there any examples or are you aware of any examples of where MPA members have been targeted by the unions because of their membership in MPA?

A The best example was recently here in Washington, D. C. Mr. Joseph Hennage of the Hennage Creative Printers was quite active in the Master Printers. As a matter of fact, he was the originator and conceiver of one of the action programs within Master Printers for financial—additional financial support, and he was given quite a bit of publicity. As a result, the union—the graphic arts union threw an informational picket line around his plant advertising the fact that he was non-union and rabidly anti-union and so forth, and at the same time conducted an organization campaign, which was not successful, but which continued for quite some time.

On the picket line Mr. Hennage was told directly: "You are a big shot in the open shop. See how you like it."

Q Now, Mr. Doesburg, you mentioned this financial contribution program that MPA has. Under that do MPA members contribute money to various MPA projects?

A They contribute money for MPA projects on a voluntary basis, and in what amount they may desire. It's not an assessment or a fixed amount.

Q It's not dues, is it?

A It's not dues. It's an additional contribution because they believe in certain programs that the Master Printers promote.

Q Would the members from your involvement with them—discussions with them—be equally concerned about

the confidentiality of these contributions that they make to this voluntary action program?

A Even more so than dues; yes, sir.

Q Why would that be?

A Number one, because in that particular instance it represents an amount which was given voluntarily by the company for a cause. It's something that other groups could compare and say: "Well, you give so much to the Master Printers and you only give so much to us." It could be a matter that "You don't increase our wages, but you are contributing to some cause that you believe in." There are a number of ramifications to it.

Those contributions are absolutely confidential and nobody knows what anybody else is paying.

Q In your opinion would the disclosure of those contributions, voluntary contributions, by individual MPA members to that have any effect on the continuation of those contributions?

A It already has. We have several cases in which the unions have come out and publicized to certain employees in an organization campaign amounts which were given to the Voluntary Action Program or paid into MPA, and as a result they were exaggerated. The company answered those results — answered those accusations, but discontinued any future payments in the Voluntary Action Program.

Q Now, Mr. Doesburg, turning to another subject, a member of MPA becomes enrolled—When does a member of MPA become enrolled in the Craftsmanship Program—employer member?

A On the initial application —

MR. DUBIN: *(Interposing)* Objection, Your Honor. I think this was brought up previously in the record.

THE COURT: I think it was, too.

MR. COLEMAN: It has been, Your Honor, but I am leading up to introducing evidence on the prior restraint aspect of the constitutional questions. I think if the witness will be allowed—It is in the record, but I think that this would sharpen our focus on it.

THE COURT: Briefly.

MR. COLEMAN: It will be brief, Your Honor.

BY MR. COLEMAN: *(Resuming)*

Q Mr. Doesburg, when would an MPA member become enrolled in the Craftsmanship Program?

A When he makes the original application for the first employee that he nominates into the program.

Q And it is approved by MPA?

A Yes.

Q Now, at that time in relation to that time, when would the magazine "Insight" be published?

A Anywhere from probably a few days to a maximum of probably three months.

Q So at any time after the member enrolls, within the 90 days, the next publication could come out?

A Right.

Q Now, under—

A *(Interposing)* Now, he might not—they might not get the first publication because of administrative problems, you know, in getting on the mail list and so forth. It can be as much as six months. He could not get the first issue that was on the press. He would get the second issue. I wanted to clear that up.

Q Right. Now, the statute requires that an LM-10 report be filed within 30 days after the agreement or arrangement. Is that correct? That we are talking about in this case?

A If there is persuasive—if an arrangement is persuasive activity.

Q That's right. Now, my point is, within 30 days after an employer member enrolled in the Craftsmanship Program, would that member be able to determine whether the magazine subsequently or—would contain persuasive material?

A No way in the world. No way in the world. As a matter of fact, if a magazine came out with certain material, after I read it I couldn't tell you whether it was persuasive under some of these definitions.

Q All right, Mr. Doesburg, one final area that I'd like to cover with you. Do MPA members by virtue of their membership in the organization receive labor relations advice and services?

A They receive labor relations information. General advice, yes. All members.

Q On labor relations topics?

A If that is the area that you mean. For example, getting hours, wages, working conditions, insurance—group insurance information and so forth. All members get that.

Q And if that is considered labor relations advice, then they get it? Is that correct?

A That is correct. As far as counseling on union organization matters, individual counseling, no.

MR. COLEMAN: I have no further questions at this time.

MR. DUBIN: Your Honor, I'd like to move to strike all references to the intent and to any information post to filing of this trial because, as MPA has said in their response to the Secretary's request for production of documents, anything post-filing is irrelevant.

THE COURT: What is your response to that, Mr. Coleman?

MR. COLEMAN: Your Honor, the relevancy is what is not in those articles. That is what he's testified to, what he was deterred from writing. I think that is all very relevant to this case, what effect this case has had on him and the materials he could put in the magazine. We didn't introduce any articles that were in subsequent issues of the magazine. He testified what he did not write.

THE COURT: Objection overruled. The motion is denied.

MR. DUBIN: I just have on question for this witness, Your Honor.

CROSS EXAMINATION

BY MR. DUBIN:

Q Isn't it a fact that your MPA membership has increased since the filing of this suit?

A I haven't got the figure in front of me. I would rather think it was the opposite because the number of plants in the industry today, because of the economic conditions and because of either mergers or bankruptcies, would be considerably less. I don't have the exact figures in MPA.

MR. DUBIN: Your Honor, I'd like to point at this time to the plaintiff Master Printers of America's answers to the second set of interrogatories. Question Number 6 was: "Have the number of MPA members that participate in the Craftsmanship Program increased or decreased or remained the same since 1979?"

THE WITNESS: That is not the question you asked me. You asked me whether the membership in MPA had increased. You didn't say anything about membership in the Craftsmanship.

Members in the Craftsmanship Program, they are less than one-fifth of the members of MPA.

BY MR. DUBIN:

Q Let me rephrase the question. Has the number of MPA members that participate in the Craftsmanship Program increased, decreased since 1979?

A The members in the Craftsmanship Program continually increase because as soon as one more employee comes in it increases the program.

MR. DUBIN: Thank you.

THE COURT: You may step down, sir.

(Witness excused)

THE COURT: Any further evidence? Mr. Coleman?

MR. COLEMAN: Yes. I call Mr. Clouse.

Whereupon

RICHARD D. CLOUSE

was called for examination by counsel for the plaintiff, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. COLEMAN:

Q Mr. Clouse, would you state your full name for the record?

A Richard Dean Clouse.

Q What position do you presently occupy?

A Director of manufacturing for Rand McNally and Company, Skokie, Illinois.

Q Where are you physically located in that capacity?

A Skokie, Illinois.

THE COURT: What is the name of the company, sir?

THE WITNESS: Rand McNally.

BY MR. COLEMAN: *(Resuming)*

Q What position did you hold prior to assuming the position of director of manufacturing?

A Plant manager in our Versailles, Kentucky facility.

Q How long did you hold that position?

A Approximately 14 years.

Q Now, is Rand McNally a member of the printing industry of America?

A Yes.

Q And by virtue of that membership, does the company have a membership in any other organization in the printing industry?

A As a part of our PIA membership we're members therefore of a Master Printers Association and a union association, which I understand are subdivisions of that parent organization.

Q Then I take it from that answer that Rand McNally has union plants as well as non-union plants. Is that correct?

A That is correct.

Q As a member of the Master Printers of America, do you receive labor relations advice and services from the Master Printers?

A Yes, we do.

Q What do those consist of?

A Well, principally in the area of what is known as good industrial relations. And we get brochures that give us advice on that subject of industrial relations, and attendance at seminars on key subjects in our industry.

Q Does Rand McNally participate in the Craftsmanship Program?

A No.

Q As far as you know, do any of your employees, employees of Rand McNally, receive the magazine "Insight"?

A No, not to my knowledge.

Q Now, turning your attention to the Versailles plant where you were plant manager for a number of years, did that plant undergo a union organizational drive while you were the plant manager there?

A Yes, it did, in 1978 and '79.

Q During the course of that union drive, did the union pass out literature to your employees?

A Yes. As a matter of fact, they did.

Q Did that literature include reference to the company's membership in the Master Printers of America?

A Yes. At one point that reference was made.

Q I'd like to show you, Mr. Clouse, what has been marked as Plaintiff's Exhibit 22.

A All right.

Q Is this part of the literature that was passed out during the course of that union organizing campaign?

A Without reading it word for word, it looks very familiar.

Q Well, if you have any questions you can read it word for word. I want to tie this down, that this is the same literature that was handed down to your employees during that campaign.

A I am of the opinion that it is, yes.

Q Now, did the company think that it was important enough to respond to this literature that was disseminated by the unions?

A Yes, we did.

Q Does information concerning your membership in the Master Printers and information concerning dues that you pay to that organization—do you consider that confidential information?

A Very much so.

Q Do you want this information disclosed to your employees or your competitors?

A No, I do not.

Q Now, specifically with reference to the amount of dues that Rand McNally pays to the Master Printers, why is it that you don't want that information disclosed to the public at large?

A Well, there would be several that come to mind. First of all, it's my understanding that such dues in this organization and others are determined based on the organization's size, marketing ability, employee count, things like that. We employ people who do competitor profiles, and our competitors do also, and information such as this facilitates their job.

Secondly, information like this seems to attract others that are in the business of solicitations, and it's very debilitating to have lots and lots of phone calls pointing out to you that you are making contributions to this organization or that organization and therefore you should make like contributions to ours. It's inefficient to the operation.

Finally, if this information were construed, and most importantly, by any of our customers as not being in their best interests, then it would be an intolerable situation. And by that I make reference to the fact that we have no control

over the emotions of our customers on issues and organizations. If they choose to be of a mind to punish our firm as a consequence of any of that, we would have to reassess our membership position in this organization or any other one.

Q Now, getting back to the dues information in particular, if you knew the dues of one of your competitors, would this be helpful in competing against that company for new customers?

A Very definitely. We could check them for—so long as we understood the formula for calculating those dues—and I assume we would because it would be disclosed to us also—we could make growth trends on them, we could make analyses of their market potential in given areas based on growth trends or regression trends. Since we know what customers they serve, we could get a fix on the changing market position of those particular customers who we might also wish to attract. Things like that.

Q Now, with respect to MPA are you aware of attempts by the labor unions to portray MPA as a labor-union-busting organization?

A Yes. I've seen references made to that.

Q And were references made to that in the Exhibit 22, which you have referred to earlier?

A Absolutely.

Q What impact, if any, could this information have on your customers?

A Well, as I said earlier, we have customers, and this is entirely out of our control, of course, who are very emotional on the subject of union, non-union, and other subjects as well. We maintain a very neutral posture. As I said earlier, we are a member of both associations. We maintain both union and non-union shops. If we thought that Rand McNally were to be associated with a negative reaction to

this, we would certainly have to reassess our membership in this organization as a consequence of such charges.

MR. COLEMAN: I have no further questions.

MR. DUBIN: I have no questions of this witness, Your Honor.

THE COURT: Do you suggest that your competitors and others don't know which of your shops are union and which are non-union?

THE WITNESS: Yes, I am certain they know which are which, and as I do about them.

THE COURT: What would, in that regard, membership in MPA reveal that isn't already known?

THE WITNESS: The size of the organization. It's my understanding that these dues are assessed on the basis of market share or employment count, and while we know whether they are union or non-union we don't necessarily know the volume of business that is done in a specific location by one of our competitors.

Our dues, for example, are paid into a local area, which is redistributed. Now, I know who is in that local area. And, therefore, if I knew that their dues were like ours, then I could assess their position, either whether I'm moving faster than they are or slower than they are—

THE COURT: (Interposing) You don't know that anyway?

THE WITNESS: It is sometimes very difficult to get from certain competitors.

THE COURT: All right. You may step down.

(Witness excused)

MR. BASKIN: I call Larry Bobo.

Whereupon

LARRY H. BOBO

was called for examination by counsel for the plaintiff, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BASKIN:

Q Could you state your full name for the record, please?

A Larry H. Bobo, B-O-B-O.

Q What is your current position?

A Manager of employer relations for W. A. Krueger Company, Senatobia, Mississippi.

Q Does W. A. Krueger have both union and non-union plants?

A Yes, they do.

Q Are you a member of the Printing Industries of America?

A Yes, we are.

Q By virtue of that membership are you a member of other printing associations?

A By virtue of that we are members of the MPA and UEA as well.

Q Does your company get labor relations advice and services from MPA, Master Printers of America?

A Yes, we do.

Q What would those be?

A Mostly the form of newsletters and bulletins produced by MPA—

THE COURT: *(Interposing)* In view of the fact that there was no cross examination, I wonder if you couldn't stipulate that this witness's testimony is going to be the same as the previous witness.

MR. BASKIN: It is the same to a large extent. Perhaps we could go to the point which it's different and then stipulate to the rest. And actually it might be simpler to ask just a few questions that may have already been stated and get them to make sure of his responses.

BY MR. BASKIN: *(Resuming)*

Q One is, do you participate in the Craftsmanship Program?

A No, we do not.

Q As far as you know, do any of your employees receive the magazine "Insight"?

A As far as I know, they do not.

Q Has the Senatobia plant, where you are located, ever had a union job?

A Yes.

Q When would that have been?

A We had three prior to my employment in 1978, so that is three between 1973 and 1978. One, which began in December of '78 through April of '79. Then another one in 1980.

Q Now, during the drive beginning at the end of 1978, was certain literature passed out to your employees?

THE COURT: I don't see any point in going through this if it's going to be the same as the other witness.

MR. BASKIN: I could make a proffer and simply state what the difference is going to be. And that is, Your Honor, that in this literature there is discussion of—again of contributions, very similar as you see in the exhibits.

The one key additional point here with this witness is that in response to this literature they pointed out that they made no contributions to the Voluntary Action Program, and subsequent to this they made a conscious decision not to contribute in the future to MPA's Voluntary Action

Program as long as there was any possibility of this becoming—

THE COURT: *(Interposing)* I am perfectly willing to let you bring out through this witness any difference.

MR. BASKIN: That is the point we are going to bring out.

THE COURT: Go ahead and bring it out. But so far, what you have brought out is the same testimony that Clouse brought out.

MR. BASKIN: Except we are dealing with a different plant and different literature. I don't know of any way to get from point one to point two except to hand him the literature and ask the question.

BY MR. BASKIN: *(Resuming)*

Q As a result of this literature and making an issue out of your company's contributions to MPA, what effect did this have on your subsequent contributions to MPA?

A We ceased all contributions to the Voluntary Action Program.

Q Thank you. And as to all other points, you having heard Mr. Clouse's testimony, would your responses be the same as his to the questions asked concerning confidentiality of the dues and contributions and the importance of that confidentiality to your company?

A Absolutely. Virtually the same.

Q In response to the question raised by the Court concerning the fact that people know which of your plants are unionized and which are not, and perhaps know that you are a member of MPA, do other people know the levels of your contributions to the Master Printers of America? Do the unions know that?

A No, they do not.

Q With the stipulation that the remainder of your testimony is the same—

THE COURT: *(Interposing)* Is the Government willing to accept that proffer?

MR. BERGER: Your Honor, we would be willing to accept the proffer that if he were asked he would answer in the same manner as the previous witness.

THE COURT: All right.

BY MR. BASKIN: *(Resuming)*

Q There is one question. I am not certain if it was asked. That is, if your contributions were disclosed, what effect would that have on your continued membership in MPA?

A We would have to re-evaluate our position as to whether or not we could continue to make those contributions, and principally because we would not want to be—or if MPA was cast as a union-busting organization, that would have a detrimental effect on our employee relations with all of our divisions, not just my division.

MR. BASKIN: Thank you.

CROSS EXAMINATION

BY MR. DUBIN:

Q I just have a couple of questions.

Do you know how the union obtained this information?

A Do I know what?

Q How the union obtained the information about the program, about the amount that they contributed.

A The union did not make a statement of the amount. They made allusions to how much Krueger paid, comparing us to another printing company.

Q Would you consider that to be an accurate amount?

A Absolutely not.

MR. DUBIN: Thank you.

THE COURT: You may step dow, sir.

(Witness excused)

MR. COLEMAN: Your Honor, we'd like to call Mr. Art Stowe as a witness.

MR. DUBIN: I object to this witness, Your Honor. He wasn't on the witness list provided prior to trial.

MR. COLEMAN: Yes, he was. If you will refer to the consolidated witness list which is on our lengthy list of witnesses. It's Number 12 on the previous list.

MR. DUBIN: All right.

Whereupon

ARTHUR RAYMOND STOWE

was called for examination by counsel for the plaintiff, having been previously duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. COLEMAN:

Q Mr. Stowe, would you state your full name for the record?

A My name is Arthur Raymond Stowe, S-T-O-W-E.

Q What position do you presently hold?

A Executive director of the Printing Industries of Maryland.

Q How long have you held that position?

A Ten years.

Q Is the Printing Industries of Maryland affiliated with the Printing Industries of America?

A Yes, it is.

Q And is that also true with respect to the Master Printers of America?

A Yes, it is.

Q Now, turning your attention to your membership list in the Printing Industries of Maryland, is that information made available to the public at large?

A Now, it is not. It is made available only to our membership.

Q Now, with respect to the dues contributions that are made to your organization and subsequently passed on to PIA and MPA, is that information made available to the public at large or to other members?

A No. The only people privy to the dues information is the paid staff of the association. We are instructed by our board that it's confidential information.

Q Is the confidentiality of both the membership and the dues contributions of your members, is that considered a very important policy of the association?

A I would say the confidentiality of the dues is greater than the membership overall, but both are considered confidential information.

Q Why is it so important to keep the dues confidential?

A To some members it probably wouldn't matter, quite frankly. To other members, they feel that the amount they pay to the organization reveals, first of all, their size, essentially because it has increased as their size of the business increases, and they don't want to have that profile known. They want to be the person hiding in the tall grass, so to speak.

Q So the dues that an individual company pays is directly related to the size of their company. It that correct?

A Our dues are based on the Social Security payroll.

Q So, in other words, if somebody knew the dues that a company paid to your organization and eventually to MPA, they would be able to determine the number of employees that that company has. Is that correct?

A It would be a fairly simple thing to do, yes.

Q Could this, from your experience in the printing industry be of competitive value, knowing what one of your competitors might have in terms of total number of employees?

A This is just a personal opinion. Some companies, again, it wouldn't matter. Other companies feel knowing the size of their company—

MR. DUBIN: *(Interposing)* Objection, Your Honor. This is merely speculative on the witness's part.

MR. COLEMAN: Your Honor, I think that this gentleman has been the director of the Printing Industries of Maryland for ten years and is certainly in a position to give his opinion as to membership reaction and why they want certain information kept confidential.

THE COURT: Well, whether or not, though, a competitor can extrapolate from the amount of dues the number of employees, I am not sure this witness is in a position to say. He said it's his personal opinion that he can. Other witnesses have testified already that they can. To the extent that it's relevant, I think it's before the Court.

BY MR. COLEMAN: *(Resuming)*

Q Mr. Stowe, if your Master Printers members of your organization—Do you have members in the Printing Industries of Maryland who were members of the Master Printers and other members who were members of the graphic arts employer section, which is the union section of the Printing Industries of America?

A Yes, we do.

Q Now, if the Master Printers members were required to have their dues reported, and the union members were not, what sort of internal organizational problems would this cause your organization?

A I would suspect our union printers would have some glee, but our open shop members would be quite upset.

Q If this information—namely, the dues, membership in Master Printers, and, more particularly, the dues that your members pay to the Master Printers—were made public, what impact do you think this would have on their continued membership in your association?

A We have some members who very possibly might resign membership.

MR. DUBIN: Again, Your Honor, that is speculative.

THE COURT: Objection overruled.

BY MR. COLEMAN: *(Resuming)*

Q You mentioned, Mr. Stowe, that some of your members indicated to you that they want to keep a low profile and not publicize their membership in the organization. Is that correct?

A That is correct. Let me back off on that a second.

MR. DUBIN: Objection, Your Honor. That is hearsay.

THE COURT: Objection overruled.

THE WITNESS: It is more of keeping a low profile. They don't want to splash that they are a member. But, more importantly, the confidentiality—I can't say the word. Please say it for me somebody.

MR. COLEMAN: *(Resuming)*

Q Confidentiality.

A Thank you. *(Continuing)*—of the dues is the critical factor.

Q Have any of your members expressed concern to you about their membership in the organization being used by the unions for targeting of organizational drive purposes?

A Members of the Printing Industries or at MPA?

Q Members of the Printing Industry of Maryland.

A Only because they are more known that way and there have been certain companies who expressed the idea that they don't want to be known generally—

MR. DUBIN: *(Interposing)* Objection. That is hearsay.

THE COURT: Objection overruled.

THE WITNESS: That they don't generally want it to be known that they even exist in the industry, quite frankly.

MR. COLEMAN: All right, I have no further questions.

MR. DUBIN: I have no questions, Your Honor.

THE COURT: You may step down, sir.

(Witness excused)

THE COURT: Any further evidence, Mr. Coleman?

MR. COLEMAN: Your Honor, we have two more witnesses. Unfortunately, we told them to be here at 11:15, and it's a little before that now.

THE COURT: Are they going to testify to the same things that have already been testified to?

MR. COLEMAN: Basically, they will, Your Honor. They are two, and I will make a proffer of evidence or stipulation if the Labor Department is willing to join in it, that these two are employers in the Printing Industry of Metropolitan Washington. One is a member of the Craftsmanship Program. One is not. And both of whom, if called,

would say that they would have to reconsider their membership in those organizations if their membership and their dues were made public as a result of this reporting disclosure.

THE COURT: That has been testified to by at least two of your witnesses who testified?

Would the Government accept that proffer of what those witnesses would testify to if they were called?

MR. DUBIN: We accept it, Your Honor, but we object to it as just being cumulative.

THE COURT: Well, it is cumulative. I see no reasons to call them. It doesn't become any more persuasive hearing it six times than two. But if the Government will accept that proffer, I see no reason to call them.

MR. COLEMAN: One added addition to that proffer, that they would reconsider their memberships in those organizations for similar reasons as have been expressed by the previous witnesses.

The two names of these witnesses would be Mr. Sam Cassio and Mr. Ralph Williams. Their names are on the list. I'm not sure what their numbers are.

THE COURT: Does the Government accept that proffer?

MR. DUBIN: Yes, Your Honor.

THE COURT: All right.

MR. COLEMAN: Your Honor, we have no further witnesses.

THE COURT: The Government have any testimony?

MR. DUBIN: No, Your Honor. We have no witnesses.

THE COURT: All right. How long do you want to argue your case, Mr. Coleman?

MR. COLEMAN: Your Honor, I might need ten minutes or so.

THE COURT: Suppose we take a short recess and I will hear counsels' closing argument.

(Whereupon, a short recess was taken.)

THE COURT: Yes, sir?

MASTER PRINTERS OF AMERICA
THE EMPLOYERS UNION

EVER HEAR OF A UNION FOR COMPANIES?

Have you ever heard of a union for companies? Rand McNally obviously has.

Take a good look at that pamphlet which was attached to your time card on November 8. At the bottom, it says, "Action Program, Master Printers of America, Arlington Virginia." That's the company union—the MPA. They are in the business of advising companies like Rand McNally how to keep you from having your own union.

Think that one over for a minute.

Rand McNally belongs to a union of employers whose major purpose is to keep you from selecting a union for you. Doesn't sound too fair, does it?

How much do you think Rand McNally pays for this service of union busting? Well, we don't know for sure, we can tell you the way dues paid by companies to the MPA are calculated. W.F. Hall in Dresden, Tennessee claims it is according to annual sales. That's supposed to be around $135 per month for each $1 million of annual sales. For W.F. Hall, that comes to $259,200 per year. AND THEY HAVEN'T DENIED THAT THIS IS WHAT THEY PAID.

Rand McNally is a larger plant—presumably as profitable. That's a lot of money to pay the MPA just to keep the GAIU out!

Ask management at Rand McNally why they belong to the MPA and how much it costs them. Then figure out how much better that money could be spent for you, as the employees who work for the company and produce the profits for Rand McNally.

And what kind of organization is the MPA?

It's not a Boy Scout Troop. On October 25, 1978, the United States Department of Justice filed a lawsuit against the MPA as a division of the Printing Industries of America, for violating federal labor law. On behalf of the United States Department of Labor, the Justice Department has filed the suit to compel the MPA to indicate who belongs to it, how much they pay, and what salaries the officers of the MPA receive for providing union busting services.

Now, Rand McNally may deny that the MPA has done anything illegal or give you some other kind of story. We have a copy of the lawsuit complaint and will show it to any Rand McNally employee who asks to see it to prove that what we say is true.

And now for the real kick in the teeth about the company union.

The MPA is fighting the Department of Justice lawsuit and they're soliciting voluntary contributions from employers like Rand McNally to fight the federal government. For companies with over 500 employees, the MPA wants a contribution of $2700. Now get this:

Contributions by Rand McNally to the MPA to fight the lawsuit for violating federal law are tax deductible!

So, who is supporting the company union and MPA's fight against the Department of Justice for violating federal law? You are, as the taxpayer.

And Rand McNally is using the money it earns from your labor, not only to support the MPA, but to buy services from the MPA to keep you from joining the GAIU. That doesn't sound very fair, either, does it?

And finally, what does Rand McNally put on your time card? A pamphlet entitled, "How You Are Protected by the Federal Government," put out by the very organization being sued by the federal government for violating federal law.

So let's look at why Rand McNally and the MPA are trying to persuade you not to join the GAIU.

It is because they are concerned with your welfare, your job security, your wage scale? Or is it because they know that the GAIU will fight for you and your families to provide the kind of working conditions and wages and job security you want and you need.

They are fighting to protect the profits you earn for them and we are fighting for you.

Think about what the company says and does. Think about the material they distribute to you. Ask questions. We are confident that when you learn the truth, you'll support the GAIU.

PX 23

MASTER PRINTERS OF AMERICA
THE EMPLOYERS UNION

EVER HEAR OF A UNION FOR COMPANIES?

Have you ever heard of a union for companies? W.A. Krueger Co. obviously has. They have used Master Printers Legal Council in past campaigns. That's the company union—the MPA. They are in the business of advising companies like W.A. Krueger how to keep you from having your own union.

Think that one over for a minute.

W.A. Krueger belongs to a union of employers whose major purpose is to keep you from selecting a union for you. Doesn't sound too fair, does it?

How much do you think W.A. Krueger pays for this service of union busting? Well, we don't know for sure, we can tell you the way dues paid by companies to the MPA are calculated. W.F. Hall in Dresden, Tennessee claims it is according to annual sales. That's supposed to be around $135 per month for each $1 million of annual sales. For W.F. Hall, that comes to $259,200 per year. AND THEY HAVEN'T DENIED THAT THIS IS WHAT THEY PAID.

W.A. Krueger is a simiar size of plant—presumably as profitable. (W.A. Krueger just announced their most profitable year in their history). That's a lot of money to pay the MPA just to keep the GAIU out!

Ask management at W.A. Krueger why they belong to the MPA and how much it costs them. Then figure out how much better that money could be spent for you, as the employees who work for the company and produce the profits for W.A. Krueger.

And what kind of organization is the MPA?

It's not a Boy Scout Troop. On October 25, 1978, the United States Department of Justice filed a lawsuit against the MPA as a division of the Printing Industries of America, for violating federal labor law. On behalf of the United States Department of Labor, the Justice Department has filed the suit to compel the MPA to indicate who belongs to it, how much they pay, and what salaries the officers of the MPA receive for providing union busting services.

Now, W.A. Krueger may deny that the MPA has done anything illegal or give you some other kind of story. We have a copy of the lawsuit complaint and will show it to any W.A. Krueger employee who ask to see it to prove that what we say is true.

And now for the real kick in the teeth about the company union.

The MPA is fighting the Department of Justice lawsuit and they're soliciting voluntary contributions from employers like W.A. Krueger to fight the federal government. For companies with over 500 employees, the MPA wants a contribution of $2700. Now get this:

Contributions by W.A. Krueger to the MPA to fight the lawsuit for violating federal law are tax deductible!

So, who is supporting the company union and MPA's fight against the Department of Justice for violating federal law? You are, the taxpayer.

And W.A. Krueger is using the money it earns from your labor, not only to support the MPA, but to buy services from the MPA to keep you from joining the GAIU. That doesn't sound very fair, either, does it?

So let's look at why W.A. Krueger and the MPA are trying to persuade you not to join the GAIU.

Is it because they are concerned with your welfare, your job security, your wage scale? Or is it because they know

that the GAIU will fight for you and your families to provide the kind of working conditions and wages and job security you want and you need.

They are fighting to protect the profits you earn for them and we are fighting for you.

Think about what the company says and does. Think about the material they distribute to you. Ask questions. We are confident that when you learn the truth, you'll support the GAIU.

GRAPHIC
ARTS
INTERNATIONAL
UNION

PX 24

MASTER PRINTERS OF AMERICA
THE EMPLOYERS UNION

EVER HEAR OF A UNION FOR COMPANIES?

W.F. HALL HAS. IN FACT THEY ARE MEMBERS OF ONE. MASTER PRINTERS OF AMERICA (MPA). THAT'S THE COMPANY UNION. THEY ARE IN THE BUSINESS OF ADVISING COMPANIES LIKE W.F. HALL HOW TO KEEP YOU FROM HAVING YOUR OWN UNION.

O.K. FOR COMPANY TO HAVE UNION—BUT NOT YOU—THINK THAT ONE OVER FOR A MINUTE.

W.F. HALL BELONGS TO A UNION OF EMPLOYERS WHOSE MAJOR PURPOSE IS TO KEEP YOU FROM SELECTING A UNION TO REPRESENT YOU. DOESN'T SOUND FAIR, DOES IT?

HOW MUCH DO YOU THINK W.F. HALL PAYS FOR THIS SERVICE OF UNION BUSTING? WELL, WE DON'T KNOW FOR SURE, WE CAN TELL YOU THE WAY DUES PAID BY COMPANIES TO THE MPA ARE CALCULATED. HALL IN DRESDEN, CLAIMS IT IS ACCORDING TO ANNUAL SALES. THAT'S SUPPOSED TO BE AROUND $135 PER MONTH FOR EACH $1 MILLION OF ANNUAL SALES. FOR W.F. HALL, THAT COMES TO $259,200 PER YEAR. THE DRESDEN PLANT DID NOT DENY THAT THIS IS WHAT THEY PAID.

ASK YOUR MANAGEMENT WHY THEY BELONG TO THE MPA AND HOW MUCH THE DUES ARE. THEN FIGURE OUT HOW MUCH BETTER THAT MONEY COULD BE SPENT RIGHT HERE IN CORINTH, FOR YOU AS THE EMPLOYEES WHO WORK SO HARD FOR THE COMPANY TO PRODUCE THE PROFITS FOR HALL.

AND WHAT KIND OF ORGANIZATION IS THE MPA??

IT'S NOT A BOY SCOUT TROOP. ON OCTOBER 25, 1978, THE UNITED STATES DEPARTMENT OF JUSTICE FILED A LAWSUIT AGAINST THE MPA AS A DIVISION OF THE PRINTING INDUSTRIES OF AMERICA, FOR VIOLATING FEDERAL LABOR LAW. THE JUSTICE DEPARTMENT HAS FILED THE SUIT TO COMPEL THE MPA TO INDICATE WHO BELONGS TO IT, HOW MUCH THEY PAY, AND WHAT SALARIES THE OFFICERS OF THE MPA RECEIVE FOR PROVIDING UNION BUSTING SERVICES.

NOW, W.F. HALL MAY DENY THAT THE MPA HAS DONE ANYTHING ILLEGAL OR GIVE YOU SOME KIND OF STORY. WE HAVE A COPY OF THE LAWSUIT COMPLAINT AND WILL SHOW IT TO ANY W.F. HALL EMPLOYEE WHO ASK TO SEE IT TO PROVE THAT WHAT WE SAY IS TRUE.

NOW FOR THE REAL KICK IN THE TEETH ABOUT THE COMPANY UNION.

THE MPA IS FIGHTING THE DEPARTMENT OF JUSTICE LAWSUIT AND THEY'RE SOLICITING VOLUNTARY CONTRIBUTIONS FROM MEMBERS LIKE W.F. HALL TO FIGHT THE FEDERAL GOVERNMENT. COMPANIES WITH OVER 500 EMPLOYEES, THE MPA WANTS A CONTRIBUTION OF $2700. NOW GET THIS! CONTRIBUTIONS BY HALL TO THE MPA TO FIGHT THE LAWSUIT FOR VIOLATING FEDERAL LAW ARE TAX DEDUCTIBLE.

SO, WHO IS SUPPORTING THE COMPANY UNION AND MPA'S FIGHT AGAINST THE DEPARTMENT OF JUSTICE FOR VIOLATING FEDERAL LAW? **YOU ARE, THE TAXPAYER.**

MR. KRENEK TELLS US THAT WE DON'T NEED A UNION TO BETTER OUR WAGES AND WORKING CONDITIONS HERE AT HALL.

MR. KRENEK WHY DON'T YOU TRY PEDDLING THAT LINE TO OUR FRIENDS, NEIGHBORS AND RELATIVES WORKING ON SOME OF THE UNION JOBS HERE IN THIS AREA SUCH AS EMPLOYEES AT:

TYRONE———MACHINIST UNION

SOUTHBRIDGE———RUBBER WORKERS UNION

TELEPHONE COMPANY———COMMUNICATION WORKERS UNION

POST OFFICE EMPLOYEES———POSTAL WORKERS UNION

LETTER CARRIERS———LETTER CARRIERS UNION

PAPER MILL———PAPER WORKERS UNION

RIPLEY SCREEN———I.B.E.W. UNION

CARPENTERS———CARPENTERS UNION

A.C.E. POWER———I.B.E.W. UNION

TISCHIMINGO POWER———I.B.E.W. UNION

RAIL ROAD———SEVERAL UNIONS SUCH AS RAILWAY CLERKS

TVA & TOM BIGBEE———AT LEAST 8 UNIONS REPRESENT THESE EMPLOYEES—LABORERS UNION, I.B.E.W. UNION, ASBESTOS WORKERS UNION, IRON WORKERS UNION, BOILERMAKERS UNION, CEMENT FINISHERS UNION, PEPEFITTERS [SIC] UNION AND TEAMSTERS.

IT DOESN'T TAKE A GENIUS TO SEE HOW MUCH BETTER OFF THESE EMPLOYEES ARE WORKING UNDER A UNION CONTRACT.

29 U.S.C. § 157, Section 7 of the National Labor Relations Act.

§ 157. Rights of employees

Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3) [29 USCS § 158(a)(3)].

(July 5, 1935, c. 372, § 7, 49 Stat. 452; June 23, 1947, c. 120, Title I, § 101 in part, 62 Stat. 140.)

29 U.S.C. § 402, Section 202(e)

§ 402. Definitions

(e) "Employer" means any employer or any group or association of employers engaged in an industry affecting commerce (1) which is, with respect to employees engaged in an industry affecting commerce, an employer within the meaning of any law of the United States relating to the employment of any employees or (2) which may deal with any labor organization concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work, and includes any person acting directly or indirectly as an employer or as an agent of an employer in relation to an employee but does not include the United States or any corporation wholly owned by the Government of the United States or any State or political subdivision thereof.

29 U.S.C. § 433(a) (4-5), Section 203 (a)(4-5) of the LMRDA

Sec. 203. (a) Every employer who in any fiscal year made-

(4) any agreement or arrangement with a labor relations consultant or other independent contractor or organization pursuant to which such person undertakes activities where an object thereof, directly or indirectly, is to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing, or undertakes to supply such employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding; or

(5) any payment (including reimbursed expenses) pursuant to an agreement or arrangement described in subdivision (4);

shall file with the Secretary a report, in a form prescribed by him, signed by its president and treasurer or corresponding principal officers showing in detail the date and amount of each such payment, loan, promise, agreement, or arrangement and the name, address, and position, if any, in any firm or labor organization of the person to whom it was made and a full explanation of the circumstances of all such payments, including the terms of any agreement or understanding pursuant to which they were made.

29 U.S.C. § 433(b), Section 203(b) of the LMRDA

(b) Persuasive activities relating to the right to organize and bargain collectively; supplying information of activities in connection with labor disputes; filing and contents of report of agreement or arrangement. Every person who pursuant to any agreement with an employer undertakes activities where an object thereof is, directly or indirectly -

(1) to persuade employees to exercise or not to exercise, or persuade employees as to the manner of

exercising, the right to organize and bargain collectively through representatives of their own choosing; or

(2) to supply an employer with information concerning the activities of employees or a labor organization in connection with a labor dispute involving such employer, except information for use solely in conjunction with an administrative or arbitral proceeding or a criminal or civil judicial proceeding;

shall file within thirty days after entering into such agreement or arrangement a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing the name under which such person is engaged in doing business and the address of its principal office, and a detailed statement of the terms and conditions of such agreement or arrangement. Every such person shall file annually, with respect to each fiscal year during which payments were made as a result of such an agreement or arrangement, a report with the Secretary, signed by its president and treasurer or corresponding principal officers, containing a statement (A) of its receipts of any kind from employers on account of labor relations advice or services, designating the sources thereof, and (B) of its disbursements of any kind, in connection with such services and the purposes thereof. In each such case such information shall be set forth in such categories as the Secretary may prescribe.

29 U.S.C. § 433(f), Section 203(f) of the LMRDA

(f) Rights protected by 29 USCS § 158(c). Nothing contained in this section shall be construed as an amendment to, or modification of the rights protected by, section 8(c) of the National Labor Relations Act, as amended [29 USCS § 158(c)].

Office-Supreme Court, U.S.
FILED
JUN 28 1985
ALEXANDER L. STEVAS,
CLERK

No. 84-1681

In the Supreme Court of the United States

OCTOBER TERM, 1984

MASTER PRINTERS OF AMERICA, PETITIONER

v.

WILLIAM E. BROCK, SECRETARY OF LABOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

CHARLES FRIED
Acting Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

FRANCIS X. LILLY
Solicitor of Labor

ALLEN H. FELDMAN
Acting Associate Solicitor

STEVEN J. MANDEL
Attorney
Department of Labor
Washington, D.C. 20210

BEST AVAILABLE COPY

QUESTION PRESENTED

Whether application of the disclosure requirements of Section 203(b) of the Labor-Management Reporting and Disclosure Act of 1959 (29 U.S.C. 433(b)) to a trade association that engages in persuader activities violates the First or Fifth Amendments.

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BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1-29) is reported at 751 F.2d 700. A previous opinion of the court of appeals (Pet. App. 38-44) is unreported. The initial opinion of the court of appeals (Pet. App. 52-55) is unofficially reported at 105 L.R.R.M. (BNA) 2995. The opinion of the district court following the second remand (Pet. App. 31-37) is unofficially reported at 112 L.R.R.M. (BNA) 2504. The opinion of the district court following the first remand (Pet. App. 46-51) is unofficially reported at 105 L.R.R.M. (BNA) 2996. The initial opinion of the district court (Pet. App. 57-64) is unofficially reported at 101 L.R.R.M. (BNA) 2483.

JURISDICTION

The judgment of the court of appeals was entered on December 26, 1984. On March 19, 1985, the Chief Justice granted an extension of time within which to file a petition

for a writ of certiorari to and including April 25, 1985, and the petition was filed on that date. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Petitioner Master Printers of America (MPA) is a national trade association that serves approximately 5,000 non-union commercial printing companies (Pet. App. 2). It has a known anti-union viewpoint (*id.* at 42-43, 50). MPA is one of two divisions of Printing Industries of America, a non-profit association that also has a separate division for unionized printing employers, the Union Employers of America (*id.* at 57-58). Employers join MPA and Union Employers of America through the recruiting efforts of local affiliates of Printing Industries of America (*id.* at 3, 58). Upon joining a local affiliated association, unionized employers automatically become members of Union Employees of America, while non-union employers automatically become members of MPA and may participate in various MPA programs (*ibid.*).

One such MPA program is the "Craftmanship Program," in which employers nominate their employees for "Craftsmanship certificates" on the basis of job skills (Pet. App. 3, 58). Craftsmanship certificate holders receive a permanent free subscription to an MPA-edited quarterly, "Insight," that goes directly to employees' homes at addresses furnished by their employers (*ibid.*). MPA has described the subjects of "Insight" to include the "advantages of the open shop," and many articles in "Insight" have been "unabashedly anti-union" (*id.* at 3-4, 42-43, 47-50, 62). As the courts below found (*id.* at 4, 42-43, 50-51), these articles constituted "persuader activity" within the meaning of Section 203(b)(1) of the Labor-Management Reporting and Disclosure Act of 1959 (LMRDA), 29 U.S.C. 433(b)(1), which is defined to be "activities [pursuant to an agreement with an employer] where an object thereof is, directly or

indirectly * * * to persuade employees to exercise or not to exercise, or persuade employees as to the manner of exercising, the right to organize and bargain collectively through representatives of their own choosing."

2. Petitioner brought suit in the United States District Court for the Eastern District of Virginia seeking a declaratory judgment that it need not file the reports required under Section 203(b).[1] The Secretary of Labor filed suit on the same day to compel MPA to file such reports. The suits were consolidated and the district court granted summary judgment for the Secretary (Pet. App. 57-64). The court of appeals affirmed the district court's holding that MPA, as a trade association, is a "person" within the meaning of Section 203(b), but it reversed the grant of summary judgment and remanded for factual proceedings on the issue whether employers participating in the Craftsmanship Program entered into a persuader agreement with MPA (Pet. App. 52-55).

On remand, the district court conducted an evidentiary hearing and found that MPA had engaged in persuader activities pursuant to an agreement with employers (Pet. App. 46-51). The district court, however, declined to address MPA's constitutional arguments, since it believed that they had been resolved on the previous appeal. The court of appeals affirmed the factual finding that MPA had entered into a persuader agreement with certain of its

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[1]Section 203(b), 29 U.S.C. 433(b), requires persons who engage in persuader activities to file two types of disclosure reports. Within 30 days of entering into an agreement with an employer, the persuader must file a report that contains a statement of the terms and conditions of the agreement. A persuader must also file an annual report disclosing the names of each employer to whom it provided labor relations advice and services in that year, as well as its receipts and disbursements relating to labor relations advice and services. See *Humphreys, Hutcheson & Moseley* v. *Donovan*, 755 F.2d 1211, 1214-1215 (6th Cir. 1985).

employer-members, but it remanded the case for consideration of MPA's constitutional challenges (*id.* at 38-44).

Following the second remand and a further hearing, the district court held that Section 203(b) does not violate MPA's First Amendment rights and is not unconstitutionally vague (Pet. App. 31-37). The court of appeals affirmed (*id.* at 1-29). Applying the analysis in *Buckley* v. *Valeo*, 424 U.S. 1, 64-65 (1976), the court first determined that any infringement of MPA's First Amendment rights is minimal. It viewed the allegations of a chilling of MPA's freedoms of speech and association with "skepticism" (Pet. App. 9), noting that much of MPA's evidence was entirely "speculative" and unsupported (*id.* at 8). In particular, the court found the evidence insufficient to show that disclosure would cause a decline in MPA's membership. It concluded, therefore, that MPA had failed to demonstrate "the sort of threat of physical harm and loss of employment found in *NAACP* v. *Alabama*, [357 U.S. 449 (1958),] and its progeny" (Pet. App. 6-10). The court also determined (*id.* at 10-16) that, even if MPA had suffered some infringement of First Amendment rights, that infringement was justified by compelling public interests in deterring corruption and enhancing the government's ability to investigate that were "substantially related" to the LMRDA disclosure scheme (Pet. App. 15). The court further ruled (*id.* at 16-20) that the nature of the disclosure required by Section 203(b) is carefully tailored and "absolutely essential" to serve its purposes (Pet. App. 17).

The court of appeals also rejected MPA's contention that Section 203(b) is impermissibly vague. It found that the term "persuade," especially when understood in the context of the statutory provision that requires both an agreement with an employer and an intent to persuade, conveys adequate notice of what is reportable conduct (Pet. App. 20-24). In addition, the court of appeals held that the 30-day

reporting requirement does not constitute a "prior restraint" on free speech because it does not involve a direct restraint that prohibits speech but rather requires only the legitimate disclosure of information (*id.* at 25-27).

ARGUMENT

In an extensive opinion on which we rely, the court of appeals considered and rejected each of the arguments raised by petitioner. The decision below does not conflict with any decision of this Court or any other court of appeals. Rather, it is in accord with the uniform decisions of the courts of appeals denying challenges to the constitutionality of Section 203(b) of the LMRDA. See *Humphreys, Hutcheson & Moseley* v. *Donovan*, 755 F.2d 1211, 1219-1223 (6th Cir. 1985); *Marshall* v. *Stevens People & Friends for Freedom*, 669 F.2d 171, 176-180 (4th Cir. 1981), cert. denied, 455 U.S. 940 (1982); *Wirtz* v. *Fowler*, 372 F.2d 315, 334-335 (5th Cir. 1966), overruled in part on other grounds, *Price* v. *Wirtz*, 412 F.2d 647 (5th Cir. 1969) (en banc); *Donovan* v. *Master Printers Ass'n*, 532 F. Supp. 1140, 1147-1152 (E.D. Ill. 1981), aff'd on opinion below, 699 F.2d 370 (7th Cir. 1983), cert. denied, No. 83-559 (Jan. 9, 1984). Furthermore, this Court recently denied review in a case involving a related printing employer trade association that presented a similar constitutional challenge to Section 203(b) and raised many of the same legal arguments. See *Donovan* v. *Master Printers Ass'n, supra.* Accordingly, further review by this Court is unwarranted.

1. Petitioner contends (Pet. 7-14) that the term "persuade" in Section 203(b) is impermissibly vague because MPA could not have anticipated that its distribution of "Insight" to employees at the request of their employers would be considered reportable unless it took place in the context of a specific union organizing campaign or was directed toward the employees of a particular company.

As the court of appeals correctly concluded, however, the term "persuade" " 'conveys sufficiently definite warning as to the [reportable] conduct when measured by common understanding and practices' " (Pet. App. 22, quoting *United States* v. *Petrillo*, 332 U.S. 1, 8 (1947)). Indeed, both courts below characterized "persuade" as a "common every day word—easily capable of being understood" (Pet. App. 22, 34). See also *Douglas* v. *Wirtz*, 353 F.2d 30, 33-34 (4th Cir. 1965), cert. denied, 383 U.S. 909 (1966); *Donovan* v. *Master Printers Ass'n*, 532 F. Supp. at 1152 ("the Act is only vague because defendant chooses to make it so").

Moreover, viewed in the "particular context" of Section 203(b), use of the term "persuade" conveys sufficiently definite notice of what transactions are reportable. See *Grayned* v. *City of Rockford*, 408 U.S. 104, 112 (1972), quoting *American Communications Ass'n* v. *Douds*, 339 U.S. 382, 412 (1950). The statutory provision specifies that the persuasion must be pursuant to an agreement with an employer, must be directed to an employee, and must have as its subject the exercise of an employee's right to organize and bargain collectively. In addition, since persuasion must be "an object" of the agreement, the provision includes an element of intent on the part of the persuader. These requirements eliminate any vagueness in "persuade" that might exist if the term were considered in the abstract.[2]

MPA argues (Pet. 7-8) that application of the disclosure requirement to regular publication of a magazine unrelated to a specific organizational campaign is an unwarranted extension of the persuader provision. The court of appeals succinctly answered this assertion: "What matters is not the precise union dispute that is discussed, but rather

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[2]Because Section 203(b) is therefore drawn with specificity, it requires no further limiting construction, as petitioner argues (Pet. 13). See pages 7-8, *infra*.

whether the article is distributed pursuant to an agreement with an employer, and whether it is published with the *intention* to persuade employees about the merits of union organizing and collective bargaining" (Pet. App. 23 (emphasis in original)). By the plain terms of Section 203(b), "persuasion" can be accomplished through distribution to employees of an article with an anti-union focus, even if it is not directed to any specific organizing campaign.

Furthermore, based on the record in this case, MPA had reasonable notice that Section 203(b) would apply to its distribution of "Insight" directly to employees. It was "well aware" that it had entered into specific arrangements with employers to distribute "Insight" (Pet. App. 23). Likewise, MPA itself had described "Insight" as including articles explaining the "advantages of the open shop" (*id.* at 3-4), and "[e]ven a cursory reading of the enumerated articles reveals that they are unabashedly anti-union" (*id.* at 50). Under these circumstances, petitioner was on notice that the mailing of "Insight" would trigger disclosure.

Contrary to petitioner's contention (Pet. 10-14), the decision below does not conflict with *Thomas* v. *Collins*, 323 U.S. 516 (1945). In *Thomas*, a state statute required labor union organizers to register before presenting any public speech soliciting union membership, and the state sought to enforce the statute by obtaining a temporary restraining order against a union organizer. This Court held that such a prior restraint on speech violated the First Amendment (323 U.S. at 540). In contrast, disclosure provisions such as Section 203(b) do not constitute a prior restraint. See *Buckley* v. *Valeo*, 424 U.S. 1, 81-82 (1976). Rather, they are valid if they reasonably serve a compelling governmental interest.

Moreover, any ambiguity surrounding the terms "solicit" in the Texas statute at issue in *Thomas* (323 U.S. at 534-535) and "advocate" in the federal statute under consideration in

Buckley v. *Valeo* (424 U.S. at 42-43) is not present in the LMRDA. The absence of limiting language in those statutory schemes permitted "solicit" and "advocate" to have various plausible meanings inhibiting free speech. The LMRDA, however, contains specific qualifications that the persuasion must take place pursuant to an agreement with an employer, be directed to employees, and be addressed to employee organizing and collective bargaining rights. As the court of appeals aptly concluded (Pet. App. 24-25 n.14), "the key term of § 203 is as carefully delineated, defined, and articulated as one could reasonably expect within a statutory framework."

2. Petitioner argues (Pet. 16-19) that the court of appeals misinterpreted and misapplied the "evidentiary standards" for showing a violation of the First Amendment. Petitioner's dispute with the "standard" applied by the court below is without merit. Contrary to MPA's assertion (Pet. 16), the court specifically acknowledged that a litigant must only show a "reasonable probability" that compelled disclosure would have a chilling effect (Pet. App. 8); at the same time, the court clearly found that the evidence here did not demonstrate any likelihood whatever of adverse effects (*id.* at 8-9). Nor did the court limit its inquiry to proof of "threats, harassment or reprisals" to the exclusion of "economic reprisal" or other "public hostility," as petitioner asserts (Pet. 16); rather, it considered all the evidence of the purported consequences of disclosure offered by petitioner (Pet. App. 8-9; see also *id.* at 36). Finally, petitioner's contention (Pet. 17) that the court did not consider proof of reprisals against MPA members or the organization itself is belied, as petitioner acknowledges (Pet. 19), by the court's express conslusion that MPA had not shown that disclosure would force a decline in its membership (Pet. App. 8-9).

Petitioner's arguments relating to the application of the *Buckley* v. *Valeo* standard (Pet. 17-19) are largely based on its disagreement with the district court's factual findings, which were affirmed by the court of appeals. There is no occasion for this Court to review these factual findings concurred in by two lower courts. See, *e.g., Tony & Susan Alamo Foundation* v. *Secretary of Labor,* No. 83-1935 (Apr. 23, 1985), slip op. 8. In any event, the courts below properly determined that petitioner had failed to make the requisite factual showing that disclosure of the information sought by the Secretary would deter employers from associating with the organization. See *Buckley* v. *Valeo,* 424 U.S. at 69-74; *NAACP* v. *Alabama,* 357 U.S. 449, 462-463 (1958). The harms that MPA alleged were "speculative" and in any case far less significant than the types of consequences that have been deemed sufficient to show that disclosure would chill the exercise of First Amendment rights. In particular, the court of appeals described the testimony that MPA members have considered withdrawing from the association (Pet. 17) as based on a "casual reference" rather than on careful documentation of MPA's membership statistics (Pet. App. 8). Indeed, petitioner concedes (Pet. 19) that no member has yet withdrawn from the MPA. By the same token, the allegation that disclosure would make MPA members "easy" targets for organizational attempts (Pet. 17) was viewed with "skepticism" by the court because "knowledgeable persons in the industry already know which shops are unionized and which are not" (Pet. App. 9). The court also found it unlikely that competitors could derive useful information from knowing the amount of dues an employer pays to MPA (Pet. 18; Pet. App. 9). These determinations are adequately supported in the record. See Pet. App. 8-9 & n.3, 36.

3. Petitioner contends (Pet. 20-28) that the decision below is inconsistent with this Court's rulings that compelled disclosure of associational ties may infringe the right of association protected by the First Amendment. See, *e.g.*, *Gibson* v. *Florida Legislative Investigation Commission,* 372 U.S. 539 (1963). Petitioner acknowledges (Pet. 20) that disclosure laws are constitutional if the governmental interest they serve outweighs the chilling effect disclosure may have on the exercise of First Amendment rights and if there is "a 'relevant correlation' or 'substantial relation' between the governmental interest and the information required to be disclosed." *Buckley* v. *Valeo,* 424 U.S. at 64 (footnotes omitted), quoting *Bates* v. *City of Little Rock,* 361 U.S. 516, 525 (1960), and *Gibson* v. *Florida Legislative Investigation Commission,* 372 U.S. at 546. Petitioner argues, however, that the court below misapplied these principles in upholding the constitutionality of Section 203(b).

The court of appeals correctly held (Pet. App. 10-15) that Section 203(b) serves a compelling governmental interest. Contrary to petitioner's suggestion (Pet. 20-21), a disclosure provision, to be valid, need not be justified by the government's interest in "self-preservation." See, *e.g., California Medical Ass'n* v. *FEC,* 453 U.S. 182, 197-199 (1981); *Buckley* v. *Valeo,* 424 U.S. at 66-68. Indeed, this Court has held that there is a compelling interest in regulating labor-management relations that justifies even direct, content-based limitations on free speech, and that the free speech rights of employers "cannot outweigh the equal rights of employees to associate freely." *NLRB* v. *Gissel Packing Co.,* 395 U.S. 575, 617 (1969). Cf. *Virginia State Board of Pharmacy* v. *Virginia Citizens Consumer Council, Inc.,* 425 U.S. 748, 778 n.3 (1976) (Stewart, J., concurring) (noting the compelling interest in maintaining "antiseptic conditions in the labor relations context").

The court below properly relied on these principles in concluding that Section 203(b) is supported by a compelling governmental interest. As the court explained, Section 203 was enacted "for the purpose of serving the twin 'compelling' governmental interests of deterring actual corruption and bolstering its own ability to investigate 'in order to act and protect' " (Pet. App. 14 (footnote omitted), quoting *Gibson* v. *Florida Legislative Investigative Commission,* 372 U.S. at 544). Accord *Humphreys, Hutcheson & Moseley* v. *Donovan,* 755 F.2d at 1221-1222. The court recognized that "the need for compelled disclosure under the Act grew out of Congressional findings that 'union busting' management middlemen were working with employers to undermine employee efforts to exercise their § 7 rights [under the National Labor Relations Act]" and these findings were based on "lengthy investigations into organized labor" (Pet. App. 11 & n.6). See *Donovan* v. *Master Printers Ass'n,* 532 F. Supp. at 1141-1143, 1148-1150; S. Rep. 187, 86th Cong., 1st Sess. 10, 12 (1959).[3] Congress thus concluded, as the court below summarized, that outside consultants had engaged in instances of "corruption and bribery" (Pet. App. 12) and that the use of persuaders "boded ill for an area of law that was already 'pervasively regulated' " (*id.* at 12-13 (citation omitted)). In Congress's view, persuader activities, whether or not illegal, were "disruptive of harmonious labor relations" (*id.* at 14), and the remedy of disclosure was a necessary means "to prevent return to the 'economic warfare of the nineteenth century' " (*id.* at 13, quoting *Donovan* v. *Master Printers Ass'n,* 532 F. Supp. at 1148).

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[3]The tactics with which Congress was concerned included direct employee contact by middlemen, surreptitious expenditures to distribute distorted information to employees, the creation of company dominated unions, and other practices that Congress believed were unethical or illegal. S. Rep. 187, *supra,* at 12.

Moreover, as the court below concluded (Pet. App. 15-16), Section 203(b) is substantially related to the furtherance of the compelling governmental interest in peaceful labor relations. See *Humphreys, Hutcheson & Moseley* v. *Donovan,* 755 F.2d at 1222; *Donovan* v. *Master Printers Ass'n,* 532 F. Supp. at 1150. First, the required disclosure enables employees to know the true nature and interests of the consultant that is attempting to persuade them to exercise their protected rights in a particular way. "This type of exposure discourages potential abuse and dramatically reduces the appearance of impropriety in an area where there has been a demonstrated propensity for wrongdoing" (Pet. App. 15). Second, disclosure alerts the Labor Department, the National Labor Relations Board, and unions to the potential involvement of a third party in the commission of unfair labor practices or other tactics that undermine the employees' rights to choose their own representatives.[4]

These justifications for disclosure are, as the court of appeals observed (Pet. App. 19), "remarkably similar" to the justifications for disclosure of campaign contributions

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[4]The facts that petitioner is a clearly identified employer organization engaged in persuader activity and that "Insight" is clearly identified as an MPA publication (Pet. 21-22) do not exempt petitioner from the disclosure requirements. See Pet. App. 16-17. In enacting Section 203(b), Congress did not distinguish between disclosed and undisclosed persuaders. *Humphreys, Hutcheson & Moseley* v. *Donovan,* 755 F.2d at 1215. Interested government agencies, as well as employees, are entitled to be kept informed of petitioner's continuing activities and to evaluate its labor practices and compliance with the law. While Congress was concerned with covert persuasion, it did not attempt to outlaw abuses by middlemen but rather sought to expose all details of their activities to publicity. See *Wirtz* v. *Fowler,* 372 F.2d at 324-325 n.23. And this public exposure "was to include not only the fact that the consultant was paid by management, but why he was paid, how much he was paid, and the practices he engaged in to earn his pay" (*id.* at 325). Accordingly, disclosure by petitioner of the details of its labor activities is necessary to further the public scrutiny purposes of the Act.

and expenditures upheld in *Buckley* v. *Valeo,* 424 U.S. at 66-68. Thus, disclosure under Section 203(b), like disclosure of campaign contributions and expenditures, serves to deter corruption, allows employees to know the source of their information, and acts as "an essential means of gathering the data necessary to detect violations of [other requirements of the statute]." 424 U.S. at 68.[5]

Finally, the court of appeals correctly ruled (Pet. App. 16-19) that the disclosure requirements of Section 203(b) are carefully tailored to serve the Act's purposes. In each of the two required reports, "only the information necessary to inform employees and the Secretary of the consultant's labor relations activities" must be disclosed (*id.* at 18). Contrary to petitioner's position (Pet. 26-27), the court found "little significance" (Pet. App. 17) in the fact that MPA must disclose information in the annual report relating to its labor-relations advice and services rendered to any

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[5]Nor does the decision below conflict, as petitioner asserts without elaboration (Pet. 24), with this Court's recent decision in *FEC* v. *National Conservative Political Action Committee,* No. 83-1032 (Mar. 18, 1985). In *National Conservative Political Action Committee,* the Court struck down the provision in the Presidential Election Campaign Fund Act that made it a criminal offense for an independent political committee to spend more than $1,000 to further a candidate's election in instances where the candidate has chosen to receive public financing. The case did not involve a disclosure provision and, apart from its treatment of the general First Amendment principles that we have already discussed, the Court's decision has no relevance to the instant petition. Moreover, while Section 203(b) only applies, as petitioner points out (Pet. 24), where persuasion activity occurs pursuant to an agreement between the persuader and the employer (see pages 6, 8, *supra*), that is not an unconstitutional distinction between individual and collective action; rather, it is simply a reflection of the fact that the Act is directed to the involvement of middlemen in the labor relations process and the special problems they pose, not to the unilateral conduct of employers.

of its employer-members, including those not participating in the Craftsmanship Program. Congress viewed management persuaders as inherently suspect, and thus sought to focus attention on all their activities. See *Price* v. *Wirtz,* 412 F.2d at 650. As the court below reasoned, "[i]n order to deter both actual corruption and the appearance of corruption, Congress concluded that it would be necessary to require the disclosure of a wide-ranging number of employers and activities, even if it meant reporting activities that were not improper" (Pet. App. 17, citing S. Rep. 187, *supra,* at 10).[6]

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[6]The decision below also does not conflict, as petitioner argues (Pet. 27-28), with *Familias Unidas* v. *Briscoe,* 619 F.2d 391 (5th Cir. 1980). In that case the court of appeals held that a Texas statute requiring public disclosure of the members of any organization that interfered with the peaceful operation of the school system was unconstitutional on the ground the the governmental interest in maintaining peaceful schools is not served by disclosure of members who did not participate in and had no knowledge of the organization's illicit goals. As the court below recognized (Pet. App. 20 n.12), unlike the Texas statute Section 203(b) does not make membership in an organization grounds for disclosure. Rather, it hinges disclosure on the existence of specific labor relations contact with a persuader (Pet. App. 20 n.12). Furthermore, Congress determined that the suspect activities of persuaders justified the disclosure of all their labor relations contacts and practices. Compare 619 F.2d at 401 (*Familias Unidas* did not involve organizations "having a demonstrated track record of illicit conduct"). Thus, in contrast to *Familias Unidas,* Section 203(b) does not seek or require the disclosure of purely passive and innocent membership in organizations with no substantial history of activity that the legislature found to be harmful to the public interest.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

CHARLES FRIED
Acting Solicitor General

FRANCIS X. LILLY
Solicitor of Labor

ALLEN H. FELDMAN
Acting Associate Solicitor

STEVEN J. MANDEL
Attorney
Department of Labor

JUNE 1985

DOJ-1985-06

DISTRIBUTED
SEP 20 1985

Supreme Court, U.S.
FILED
SEP 19 1985
JOSEPH F. SPANIOL, JR.
CLERK

No. 84-1681

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

MASTER PRINTERS OF AMERICA,
Petitioner,

v.

RAYMOND J. DONOVAN,
Respondent.

SUPPLEMENTAL BRIEF OF PETITIONER

FRANCIS T. COLEMAN, JR.*
ELIZABETH L. LEWIS
BOOTHE, PRICHARD & DUDLEY
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 293-6900
Attorneys for Master Printers of America

*Counsel of Record

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NO. 84-1681

MASTER PRINTERS OF AMERICA,
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RAYMOND J. DONOVAN,
Respondent.

SUPPLEMENTAL BRIEF OF PETITIONER

STATEMENT OF THE CASE

The Petition for Certiorari by Master Printers of America (MPA) was filed in this case with this Court on April 25, 1985. On July 22, 1985, the United States Court of Appeals for the Eighth Circuit decided the case of *Donovan v. The Rose Law Firm*, 768 F.2d 964 (8th Cir. 1985). The purpose of this Supplemental Brief is to call the Court's attention to the Eighth Circuit's recent decision which interprets Section 203(b) of the LMRDA, the Statute at issue in MPA's Petition for Certiorari.

REASONS FOR GRANTING THE WRIT

In its Petition for Certiorari, MPA set forth as its reasons for granting the Writ in this case that Section 203(b) of the LMRDA as interpreted by the Fourth Circuit, violates the Constitutional Rights of Free Speech and Free Association of MPA and its members and that the Fourth Circuit's Decision was in direct conflict with previous decisions of this Court on these issues. The recent decision of the Eighth Circuit in *Donovan v. The Rose Law Firm*, 768 F.2d 964 (8th Cir. 1985), is based on a far more detailed analysis

of the legislative history of Section 203(b) of the LMRDA than previous circuit court opinions, and finds that this analysis supports a more restrictive interpretation of §203(b) than that espoused by the Fourth Circuit in this case. The Eighth Circuit's interpretation of Section 203(b), applied to the facts of this case, avoids the constitutional infirmities created by the Fourth Circuit's interpretation and raised in the Petition for Certiorari.

Although the Eighth Circuit's reading of Section 203(b) permitted it to avoid constitutional questions, the Court stated as follows:

> The constitutional issues raised by a broader reading of the §203 reporting requirements are certainly not insubstantial. In particular, we have difficulty perceiving the compelling governmental interest to be served by the reporting of all receipts and disbursements related to any labor relations advice given to or services performed for clients for whom a consultant has not performed any persuader activity.

768 F.2d at ___, 119 LRRM at 3353.

This issue is squarely raised in MPA's Petition for Certiorari (*See* Petition for Certiorari, pp. 20-23). Thus, the decision of the Fourth Circuit in this case meets an additional standard for granting writs of certiorari set forth in Rule 17(a) of the Rules of the Supreme Court of the United States in that it is "in conflict with the decision of another federal court of appeals on the same matter."

In *Donovan v. The Rose Law Firm*, 119 LRRM 3345 the issue raised by the facts was whether a law firm which engaged in persuader activity on behalf of one of its clients during the course of an organizational campaign was

required to file an annual disclosure report which encompassed all receipts and disbursements regarding labor relations advice to other clients. The law firm contended first, that the LMRDA only required disclosure of receipts and disbursements with regard to employers for whom persuader activity was performed; second, that to require additional disclosure violated the attorney-client privilege; and third, that additional disclosure violated the First and Fourth Amendment rights of the firm and its clients.

The Eighth Circuit agreed that the LMRDA did not require the additional reports and therefore did not reach the other issues raised by the law firm. In reaching its conclusion the Eighth Circuit reviewed the legislative history carefully and found that previous circuit court opinions had not analyzed the legislative history closely and had misinterpreted it. The Eighth Circuit found, as urged by this Petitioner, that "the chief evil against which Congress hoped to intervene through the use of the consultant reporting requirement was the use of labor consultants who were involved in bribery, corruption and unfair labor practices." 768 F.2d at ___, 119 LRRM at 3347, 3348. The Court held that:

> [T]he annual report required by §203(b) need not cover the services of a consultant by reason of his giving advice to an employer, representing an employer before a court or administrative agency, or engaging in collective bargaining on behalf of an employer, unless the consultant has performed persuader activities for that employer.

768 F.2d at ___, 119 LRRM at 3352.

We urge this Court to grant certiorari in this case and adopt the careful interpretation of §203(b) articulated by the Eight Circuit. In this case, the application of §203(b) is

even farther from the true purpose of the statute than in the case decided by the Eighth Circuit. Here, there is not even a consultant involved in a labor campaign. The so-called persuader activity which the Fourth Circuit found to trigger the reporting requirement was publication of a magazine unrelated to an organizational campaign.

Based on its finding that persuader activity had taken place, the Fourth Circuit required disclosure of receipts and disbursements relating to 5,000 Trade Association members, even though only 929 had employees who received the magazine. This result is neither constitutionally permissible nor dictated by a correct reading of the statute.

CONCLUSION

For the foregoing reasons and those set forth in the Petition for Certiorari, a Writ of Certiorari should be issued to review the judgment of the United States Court of Appeals for the Fourth Circuit.

Respectfully submitted,

*Francis T. Coleman, Jr.**
Elizabeth L. Lewis
BOOTHE, PRICHARD & DUDLEY
2000 Pennsylvania Avenue, N.W.
Suite 8350
Washington, D. C. 20016
(202) 293-6900

*Counsel of Record

Supreme Court, U.S.
FILED
OCT 1 1985
JOSEPH F. SPANIOL, JR.
CLERK

No. 84-1681

In the Supreme Court of the United States

OCTOBER TERM, 1985

MASTER PRINTERS OF AMERICA, PETITIONER

v.

WILLIAM E. BROCK, SECRETARY OF LABOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE RESPONDENT

CHARLES FRIED
Acting Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

FRANCIS X. LILLY
Solicitor of Labor
Department of Labor
Washington, D.C. 20210

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In the Supreme Court of the United States

OCTOBER TERM, 1985

No. 84-1681

MASTER PRINTERS OF AMERICA, PETITIONER

v.

WILLIAM E. BROCK, SECRETARY OF LABOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

SUPPLEMENTAL MEMORANDUM FOR THE RESPONDENT

In a supplemental brief filed on September 19, 1985 (and received by our Office on September 23), petitioner contends that certiorari is warranted in this case in light of the July 22 decision of the Eighth Circuit in *Donovan* v. *The Rose Law Firm*, 768 F.2d 964 (1985). That contention is incorrect for two reasons.

First, the decision in *Rose Law Firm* addressed the proper construction of the "persuader" annual reporting requirement in Section 203 of the Labor-Management Reporting and Disclosure Act of 1959, 29 U.S.C. 433; it explicitly did not reach the issue of the constitutionality of Section 203 (see 768 F.2d at 966, 975). In contrast, the petition in this case presents no question of statutory interpretation under Section 203, but instead is confined to a constitutional attack on the validity of that provision. Indeed, while petitioner asserted several statutory issues in

the lower courts at earlier stages of the litigation, it never raised the question of the scope of the annual reporting requirement that was decided in *Rose Law Firm*; consequently, it did not properly preserve the statutory issue below and cannot be heard at this late date to object on that ground. Nor would resolution of that statutory issue in petitioner's favor avoid the constitutional questions presented in the petition, for, as petitioner concedes (Supp. Br. 4), it would still be required to make disclosures relating to nearly 1000 of its members. Thus, contrary to petitioner's assertion, *Rose Law Firm* does not conflict with the decision in this case or justify further review here.

Second, the Acting Solicitor General has recently authorized a petition for rehearing and suggestion for rehearing en banc in *Rose Law Firm*, which is due to be filed by October 4, 1985. Accordingly, the judgment of the court of appeals in *Rose Law Firm* is not yet final and provides no basis for a claim of conflict calling for the Court's review at this time.

Respectfully submitted.

CHARLES FRIED
Acting Solicitor General

FRANCIS X. LILLY
Solicitor of Labor
Department of Labor

OCTOBER 1985

DOJ-1985-10